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CVRRENT EVENTS

American to Be International Judge

An American will be one of the judges of the International Court of Justice. John Bassett Moore has been elected to that position by the League of Nations at a meeting at Geneva, and it is stated that he will accept.

He has been professor of international law and diplomacy at Columbia for twenty years and has had much experience in public service involving international relations. He was a law clerk of the Department of State in 1885; Assistant Secretary of State from 1886 to 1891; Assistant Secretary of State in 1898; Secretary and Counsel of the Spanish American Peace Commission in 1898 and Counsellor of the State Department in 1914. He has been a member of the permanent Court at the Hague since 1914 and is Vice-Chairman of the International High Commission organized by the Pan-American Financial Conference in 1915. He has written much on the subject of international relations.

Although Elihu Root was nominated by six countries—Italy, France, China, Brazil, Bolivia and Uruguay—for a place on the Court, he let it be known sufficiently far in advance that it would be impossible for him to accept. He was one of the leading members of the conference which outlined the plan for fhe International Court of Justice and defined its functions. Roscoe Pound, of Harvard, was another American whose name was mentioned in connection with the honor of a position on that tribunal.

The French Bar Association

News of the recently organized French Bar Association was brought to Cincinnati by Prof. Jean Appleton, of the University of Lyon, president of that organization. He stated that it has been in existence about two years and has at present a comparatively small membership—about six hundred. But efforts are being made to increase its numbers and it is expected that they will be successful. The Association is preparing to publish an official organ which will be useful in extending its influence and in securing additional members. Professor Appleton, who bears a distinctly American name, counts an American among his ancestors.

Economic Pressure and Judicial Salaries

That economic pressure threatens to deprive the English Bench of some of its most eminent occupants was admitted by the Attorney General of England during a comparatively recent statement in the House of Commons. In brief, certain judges are thinking, in consequence of the inadequacy of their emoluments, of returning to the Bar. The Law Journal, from which the above information is taken, proceeds to declare that there is no doubt that the salaries of Judges ought, in view of the high cost of living and the enormous growth in taxation, to be increased.

"When income tax was one shilling," it states, "the Judge's salary of £5000 yielded a net income of £4750. Nowadays, with income tax at six shillings, and the addition of supertaxes, his income is reduced to £3000, the purchasing power of which also has been reduced in something like the same ratio. When, in 1809, the salaries of puisne judges were raised from £3000 to £4000, the increase was sanctioned because of the inflated price of commodities. Subsequently the salaries were increased to £5500, but in 1828 they were fixed at their present figure. For nearly a century, therefore, the stipends of Judges have remained at £5000, notwithstanding the great increase in the earnings of the Bar and the general rise in the standards of living. Is there any other branch of public service in which the emoluments are the same as they were in the early years of the last century?"

Arguments for the increase of judicial salaries in England and in this country naturally follow

the same economic logic. But the similarity ceases when one considers the standards of judicial compensation which present conditions are lowering in the two countries. Even after economic pressure has done its worst, the Judges' salaries in Great Britain still remain respectable from the standpoint of their poorly paid American brethren.

Landis Resolution Echoes

Few actions of the American Bar Association have caused more "repercussions" in the press than its censure of Judge Landis. A large majority of the expressions which have come to the Journal from its regular clipping service—and they come from various sections of the country—unreservedly indorse the position of the Association. Others, however, and notably the newspapers of Chicago, the city in which Judge Landis lives, have come forward in his defense. Apparently the press in most other communities views the matter from the more or less detached standpoint of the principle involved and the danger that the case might broaden into a precedent, while the press of Chicago, in the main, cannot help reading into the matter the whole context of Judge Landis' utter fearlessness, his absolute honesty of purpose and his useful activities in that community.

Thus the *Chicago Tribune,* while declaring that "this community which Judge Landis serves would not resent a discussion of or judgment on the judicial proprieties in his case," insists that the intimation that he is lowering the public confidence in the judiciary is a gross misrepresentation. On the contrary, it adds, "he is more feared by the lawless and more respected by the lawful than any man sitting on the bench." As for his duties in connection with baseball, it declares that as a matter of fact they do not interfere with his judicial duties and would not be allowed to do so.

The Chicago *Evening Post,* somewhat along the same line, says that "upon the propriety of a Federal Judge holding an outside job, honest men may well disagree. Our own opinion is that the act might be dangerous in its general application, but that it is extremely beneficial to the public in the case of Judge Landis. The American Bar Association acts according to narrow legalistic standards when it passes resolutions of censure, but it outrages truth and this community's sense of justice when it charges that 'money grabbing' is the motive in the case."

A typical expression of the other view is found in the declaration of the *New York World* that the resolutions of the American Bar Association constitute "a stinging impeachment and deserved," and "if he has any defense except that he gets six times as much from his private employment as from his judicial services, he has never taken the trouble to present it."

The *Philadelphia Inquirer* declares that "the impropriety of his attitude is too obvious to be disputed. It is idle to say that his judicial decisions could not be affected by his extremely profitable connections with the baseball interests. No man can serve two masters with equal fidelity. However upright Judge Landis' intentions he is inevitably open to suspicion while he attempts it."

The St. Louis, Mo., *Times* declares that "magistrates upon the bench have but one responsibility—can have but one if the high character of our courts is to be maintained. That responsibility is the full discharge of their official duties. They are named for no other purpose; every moral obligation demands their fidelity to the high aim the law intends them to serve. Nothing braver or more patriotic has occurred in this generation than the stern rebuke by the legal profession of one of its members for besmirching the judiciary."

Bonus Measure Held Unconstitutional

The New York Court of Appeals has decided that the Soldier Bonus Law of that State is unconstitutional. The decision was by a divided court, five supporting the decision and two filing dissenting opinions. The opinion was written by Justice Andrews and held that the Bonus Law involved a gift of the State's credit and was therefore prohibited by Article 7, Section 1, of the State Constitution. Justice Andrews, however, took particular care to make it plain that the logic of the decision was not that the legislature was unable to aid the wounded. "We cannot too clearly emphasize at the outset of our discussion," he said, "that this is not an act to restore to health and usefulness those who became disabled in the performance of their duties. To do this is a sacred trust. Every human impulse prompts us to its full accomplishment. Neglect here spells disgrace. For them as a class nothing is done. Whatever right the State may have to use this money in making these the subject of its first and devoted consideration, this right finds no expression in the present statute. The wounded are not a reason or a ground for its enactment."

The Soldier Bonus Law was enacted by the 1921 Legislature after being indorsed by a huge majority in a referendum last November. The referendum authorized a bond issue of $45,000,000 for bonus purposes. A test case brought about the decision above mentioned.

Women and the American Bar Association

Woman lawyers were more in evidence at the Cincinnati meeting of the American Bar Association than at any previous gathering. Several of them took part in the discussions in certain sections. At the banquet of the Association Chief Justice Taft, who presided as toastmaster, called attention to the fact that for the first time in the history of these functions there was a separate table for the woman lawyers. One of those in attendance, Miss Pearl McCall, was elected a member of the General Council for the State of Idaho.

SIGNED ARTICLES

As one object of the AMERICAN BAR ASSOCIATION JOURNAL is to afford a forum for the free expression of members of the bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of this JOURNAL assume no responsibility for the opinions in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

THE SPIRIT OF LAWLESSNESS

Evidences of Revolt in Industrial, Political, Commercial, Social and Artistic Fields Against The Spirit of Authority and Moral Psychology Underlying It*

By James M. Beck
Solicitor General of the United States

I SHARE your deep regret that the late President of this Association did not live to deliver the President's address. To do so is a great honor, to which a long and honorable service at the Bar had justly entitled him. While to others will be given the honorable task of paying tribute to his memory, I may, at least, say that he was one of those true men of whom the poet has said:

> For Time that tests what's true, what's false
> Has sounded well their metal and has heard an honest ring.

I deeply appreciate the great honor which the Executive Committee of this Association has done me in the invitation to deliver the President's address. How inadequately I shall meet the responsibility, no one appreciates more than I do. Give me your careful attention and indulgent patience, for my subject is as wide as society and as deep as human nature.

We are met in annual convention to consider the problems, interests and ideals of our great and noble profession. It would be easy, in the manner of the silversmith of Ephesus who, on a certain occasion cried with a loud voice: "Great is Diana of the Ephesians," to rhapsodize about the nobility of the law. Were we not told, in the days of our novitiate, by Mr. Justice Blackstone, that the law was "a science which employs in its theory the noblest faculties of the soul and exerts in its practice the cardinal virtues of the heart"? Did not the famous—and also infamous—Francis Bacon tell us that it was "the great organ through which the sovereign power (of society) moves"? And did not a great layman, Samuel Johnson, say that it is "the last result of human understanding acting upon human experience for the benefit of the public"?

It would, of course, be easy to match these with less complimentary references; for, if the records of literature be any criterion, neither the law nor the lawyer has at any time been altogether popular. It may be said of the authority of law, as Mrs. Partington said of the theological doctrine of total depravity, that "it is a very good doctrine, if lived up to."

This suggests the theme of my address which is the "Spirit of Lawlessness." It is my purpose to inquire into the causes of a revolt against authority, of which no careful observer of present tendencies can be ignorant.

One of the most quoted—and also misquoted—Proverbs of the wise Solomon says, as translated in the authorized version: "Where there is no vision, the people perish." What Solomon actually said was: "Where there is no vision, the people cast off restraint." The translator thus confused an effect with a cause. What was the vision to which the Wise Man referred? The rest of the Proverb, which is rarely quoted, explains:

> Where there is no vision, the people cast off restraint; *but he that keepeth the law, happy is he.*

The vision, then, is the authority of law, and Solomon's warning is that to which the great and noble founder of Pennsylvania many centuries later gave utterance, when he said:

> That government is free to the people under it, where the laws rule and the people are a party to those laws; and all the rest is tyranny, oligarchy and confusion.

It is my purpose to discuss the moral psychology of the present revolt against the spirit of authority. Too little consideration has been paid by our profession to questions of moral psychology. These have been left to metaphysicians and ecclesiastics, and yet—to paraphrase the saying of the Master—"the laws were made for man and not man for the laws," and if the science of the law ignores the study of human nature and attempts to conform man to the laws, rather than the laws to man, then its development is a very partial and imperfect one.

Let me first be sure of my premises. Is there in this day and generation a spirit of lawlessness greater or different than that that has always characterized human society? Such spirit has always existed, and even when the penalty of death was visited upon nearly all offenses against life and property. Blackstone tells us (Book IV, Chap. 1) that in the Eighteenth Century it was a capital offense to cut down a cherry tree in an orchard—a penalty which should increase our admiration for George Washington's courage and veracity.

We are apt to see the past in a golden haze, which obscures our vision. Thus, we think of William Penn's "holy experiment" on the banks of the Delaware as the realization of Sir Thomas More's dream of Utopia; and yet Pennsylvania was called in 1698 "the greatest refuge for pirates and rogues in America," and Penn himself wrote, about that time, that he had heard of no place which was "more overrun with wickedness" than his City of Brotherly Love, where things were so "openly committed in defiance of law and virtue—facts so foul that I am forbid by common modesty to relate them."

Conceding that lawlessness is not a novel phenomenon, has not the present age been characterized by an exceptional revolt against the authority of law? The statistics of our criminal courts show in recent years an unprecedented growth in crimes. Thus, in the federal courts, pending criminal indictments have increased from 9,503 in the year 1912 to over 70,000 in the year 1921. While this abnormal increase is, in part, due to sumptuary legislation—for approximately 30,000 cases now pending arise under the prohibition statutes—yet, eliminating these, there yet remains an increase in nine years of over 400 per cent in the comparatively narrow sphere of the federal criminal jurisdiction. I have been unable to get the data from the state courts; but the growth of crimes can be measured by a few illustrative statistics. Thus, the losses from burglaries which have been repaid by casualty companies, have grown in amount from $886,000 in 1914 to over $10,000,000 in 1920; and, in a like period, embezzlements have increased fivefold. It is notorious that the thefts from the mails and express companies and

*Presidential address delivered August 31, 1921, at the Forty-fourth Annual Meeting of the American Bar Association, at Cincinnati.

other carriers have grown to enormous proportions. The holdup of railroad trains is now of frequent occurrence, and is not confined to the unsettled sections of the country. Not only in the United States, but even in Europe, such crimes of violence are of increasing frequency, and a recent dispatch from Berne, under date of August 7, stated that the famous International Expresses of Europe were now run under a military guard.

The streets of our cities, once reasonably secure from crimes of violence, have now become the field of operations for the footpad and highwayman. The days of Dick Turpin and Jack Shepherd have returned, with this serious difference—that the Turpins and Shepherds of our day are not dependent upon the horse, but have the powerful automobile to facilitate their crimes and make sure their escape.

In Chicago alone, 5,000 automobiles were stolen in a single year. Once murder was an infrequent and abnormal crime. Today in our large cities it is of almost daily occurrence. In New York, in 1917, there were 236 murders and only 67 convictions; in 1918, 221, and 77 convictions. In Chicago, in 1919, there were 336, and 44 convictions.

When the crime wave was at its height a few years ago, the police authorities in more than one city confessed their impotence to impose effective restraint. Life and property had seemingly become almost as insecure as during the Middle Ages.

As to the subtler and more insidious crimes against the political state, it is enough to say that graft has become a science in city, state and nation. Losses by such misapplication of public funds—piled Pelion on Ossa—no longer run in the millions, but the hundreds of millions. Our city governments are, in many instances, foul cancers on the body politic; and for us to boast of having solved the problem of self-government is as fatuous as for a strong man to exult in his health when his body is covered with running sores. It has been estimated that the annual profits from violations of the prohibition laws have reached $300,000,000. Men who thus violate these laws for sordid gain are not likely to obey other laws, and the respect for law among all classes steadily diminishes as our people become familiar with, and tolerant to, wholesale criminality. Whether the moral and economic results overbalance this rising wave of crime, time will tell.

In limine, let us note the significant fact that this spirit of revolt against authority is not confined to the political state, and therefore its causes lie beyond that sphere of human action.

Human life is governed by all manner of man-made laws—laws of art, of social intercourse, of literature, music, business—all evolved by custom and imposed by the collective will of society. Here we find the same revolt against tradition and authority.

In music, its fundamental canons have been thrown aside and discord has been substituted for harmony as its ideal. Its culmination—jazz—is a musical crime.

In the plastic arts, all the laws of form and the criteria of beauty have been swept aside by the futurist, cubists, vorticists, tactilists, and other æsthetic Bolsheviki.

In poetry, where beauty of rhythm, melody of sound and mobility of thought were once regarded as the true tests, we now have the exaltation of the grotesque and brutal; and hundreds of poets are feebly echoing the "barbaric yawp" of Walt Whitman, without the redeeming merit of his occasional sublimity of thought.

In commerce, the revolt is one against the purity of standards and the integrity of business morals. Who can question that this is pre-eminently the age of the sham and the counterfeit? Science is prostituted to deceive the public by cloaking the increasing deterioration in quality. The blatant medium of advertising has become so mendacious as to defeat its own purpose.

In the recent deflation in commodity values, there was widespread "welching" among business men who had theretofore been classed as reputable. Of course, I recognize that a far greater number kept their contracts, even when it brought them to the verge of ruin. But when in the history of American business was there such a volume of broken faith as a year ago?

In the greater sphere of social life, we find the same revolt against the institutions which have the sanction of the past. Laws which mark the decent restraints of print, speech and dress have in recent decades been increasingly disregarded. The very foundations of the great and primitive institutions of mankind—like the family, the church, and the state—have been shaken. Nature itself is defied. Thus, the fundamental difference of sex is disregarded by social and political movements which ignore the permanent differentiation of social function ordained by God Himself.

All these are but illustrations of the general revolt against the authority of the past—a revolt that can be measured by the change in the fundamental presumption of men with respect to the value of human experience. In all former ages, all that was in the past was presumptively true, and the burden was upon him who sought to change it. Today, the human mind apparently regards the lessons of the past as presumptively false—and the burden is upon him who seeks to invoke them.

Lest I be accused of undue pessimism, let me cite as a witness one who, of all men, is probably best equipped to express an opinion upon the moral state of the world. I refer to the venerable head of that religious organization which, with its trained representatives in every part of the world, is probably better informed as to its spiritual state than any other organization.

Speaking last Christmas Eve, in an address to the College of Cardinals, the venerable Pontiff gave expression to an estimate of present conditions which should have attracted far greater attention than it apparently did.

The Pope said that five plagues were now afflicting humanity. The first was the unprecedented challenge to authority. The second, an equally unprecedented hatred between man and man. The third was the abnormal aversion to work. The fourth, the excessive thirst for pleasure as the great aim of life. And the fifth, a gross materialism which denied the reality of the spiritual in human life.

The accuracy of this indictment will commend itself to men who, like myself, are not of Pope Benedict's communion. I trust that I have already shown that the challenge to authority is universal and is not confined to that of the political state. Even in the narrower confine of the latter, the fires of revolution are either violently burning or, at least, smoldering. Two of the oldest empires in the world, which, together

have more than half of its population (China and Russia) are in a welter of anarchy; while India is in a stage of submerged revolt. If the revolt were confined to autocratic governments, we might see in it merely a reaction against tyranny; but even in the most stable of democracies and among the most enlightened peoples, the underground rumblings of revolution may be heard.

The government of Italy has been preserved from overthrow, not alone by its constituted authorities, but by a band of resolute men, called the "fascisti," who have taken the law into their own hands, as did the vigilance committees in western mining camps, to put down worse disorders.

Even England, the mother of democracies, and once the most stable of all governments in the maintenance of law, has been shaken to its very foundations in the last three years, when powerful groups of men attempted to seize the state by the throat and compel submission to their demands by threatening to starve the community. This would be serious enough if it were only the world-old struggle between capital and labor and had only involved the conditions of manual toil. But the insurrection against the political state in England was more political than it was economic. It marked, on the part of millions of men, a portentous decay of belief in representative government and its chosen organ—the ballot box. Great and powerful groups had suddenly discovered—and it may be the most portentous political discovery of the twentieth century—that the power involved in their control over the necessaries of life, as compared with the power of the voting franchise, was as a 42 centimeter cannon to the bow and arrow. The end sought to be attained, namely, the nationalization of the basic industries, and even the control of the foreign policy of Great Britain, vindicated the truth of the British Prime Minister's statement that these great strikes involved something more than a mere struggle over the conditions of labor, and that they were essentially seditious attempts against the life of the state.

Nor were they altogether unsuccessful; for, when the armies of Lenin and Trotsky were at the gates of Warsaw, in the summer of 1920, the attempts of the governments of England and Belgium to afford assistance to the embattled Poles were paralyzed by the labor groups of both countries, who threatened a general strike if those two nations joined with France in aiding Poland to resist a possibly greater menace to western civilization than has occurred since Attila and his Huns stood on the banks of the Marne.

Of greater significance to the welfare of civilization is the complete subversion during the World War of nearly all the international laws which had been slowly built up in a thousand years. These principles, as codified by the two Hague Conventions, were immediately swept aside in the fierce struggle for existence, and civilized man, with his liquid fire and poison gas and his deliberate attacks upon undefended cities and their women and children, waged war with the unrelenting ferocity of primitive times.

Surely, this fierce war of extermination, which caused the loss of three hundred billion dollars in property and thirty millions of human lives, did mark the "twilight of civilization." The hands on the dial of time had been put back—temporarily, let us hope and pray—a thousand years.

Nor will many question the accuracy of the second count in Pope Benedict's indictment. The war to end war only ended in unprecedented hatred between nation and nation, class and class, and man and man. Victors and vanquished are involved in a common ruin. And if in this deluge, which has submerged the world, there is a Mount Ararat, upon which the ark of a truer and better peace can find refuge, it has not yet appeared above the troubled surface of the waters.

Still less can one question the closely related third and fourth counts in Pope Benedict's indictment, namely, the unprecedented aversion to work, when work is most needed to reconstruct the foundations of prosperity, or the excessive thirst for pleasure which preceded, accompanied, and now has followed the most terrible tragedy in the annals of mankind. The true spirit of work seems to have vanished from millions of men; that spirit of which Shakespeare made his Orlando speak when he said of his true servant, Adam:

> O, good old man! how well in thee appears
> The constant service of the antique world,
> When service sweat for duty, not for meed!

The *morale* of our industrial civilization has been shattered. Work for work's sake, as the most glorious privilege of human faculties, has gone, both as an ideal and as a potent spirit. The conception of work as a degrading servitude, to be done with reluctance and grudging inefficiency, seems to be the ideal of millions of men of all classes and in all countries.

The spirit of work is of more than sentimental importance. It may be said of it, as Hamlet says of death: "The readiness is all." All of us are conscious of the fact that, given a love of work, and the capacity for it seems almost illimitable—as witness Napoleon, with his thousand-man power, or Shakespeare, who in twenty years could write more than twenty masterpieces.

On the other hand, given an aversion to work, and the less a man does, the less he wants to do, or is seemingly capable of doing.

The great evil of the world today is this aversion to work. As the mechanical era diminished the element of physical exertion in work, we would have supposed that man would have sought expression for his physical faculties in other ways. On the contrary, the whole history of the mechanical era is a persistent struggle for more pay and less work, and today it has culminated in world-wide ruin; for there is not a nation in civilization which is not now in the throes of economic distress, and many of them are on the verge of ruin. In my judgment, the economic catastrophe of 1921 is far greater than the politico-military catastrophe of 1914.

The results of these two tendencies, measured in the statistics of productive industry, are literally appalling. Thus, in 1920, Italy, according to statistics of her Minister of Labor, lost 55,000,000 days of work because of strikes alone. From July to September, many great factories were in the hands of revolutionary communists. A full third of these strikes had for their end political and not economic purposes. In Germany, the progressive revolt of labor against work is thus measured by competent authority: there were lost in strikes in 1917, 900,000 working days; in 1918, 4,900,000, and in 1919, 46,600,000. Even in our own favored land, the same phenomena are observable. In the state of New York alone, for 1920, there was a loss due to strikes of over 10,000,000 working days. In all countries the losses by such cessations from labor are little as compared with those due to the spirit which in England is called "ca'canney," or the shirking of perform-

ance of work, and of sabotage, which means the deliberate destruction of machinery in operation. Everywhere the phenomenon has been observed that, with the highest wages known in the history of modern times, there has been an unmistakable lessening of efficiency, and that with an increase in the number of workers, there has been a decrease in output. Thus, the transportation companies in this country have seriously made a claim against the United States Government for damages to their roads, amounting to $750,000,000, claimed to be due to the inefficiency of labor during the period of governmental operation.

Accompanying this indisposition to work efficiently has been a mad desire for pleasure such as, if it existed in like measure in preceding ages, has not been seen within the memory of living man. Man has danced upon the verge of a social abyss, and even the dancing has, both in form and in accompanying music, lost its former grace and reverted to the primitive forms of uncivilized conditions.

There is no better evidence of this excessive thirst for pleasure than the newspaper press, which is, in our time, the "brief abstract and chronicle of the times," and which shows the body of the age, "its form and pressure." What a transformation of human values the modern newspaper discloses! Once largely the record of man's higher achievements, in its discussion of literature, art and politics, today its space is largely devoted to the ephemeral and the trivial. Pages and pages are devoted to sport, and even to ignoble forms of sport; while literary, art and musical reviews and scientific discussions are either omitted altogether, or are grudgingly given a little space once a week.

What better illustration of this extraordinary revaluation of personalities and incidents than the recent fistic duel between two combatants in Jersey City—a duel which was in marked contrast to another fateful encounter on the heights of Weehawken more than a century ago? Nearly one hundred thousand men and women of all classes and conditions and from all parts of the world assembled in Jersey City on July 2 last, many of them only to gratify their jaded appetites for a new thrill; and for months and months before and for weeks thereafter the press devoted, not merely columns, but pages, to this trial of strength.

I recall, with amusement, that when I had the privilege, in the summer of 1920, to have an audience with His Majesty, King Albert—"every inch a king" and one of the greatest in the golden annals of heroism—he humorously said to me, in speaking of current values, that, so far as he could see, the greatest personalities in the world were Mary Pickford and Charley Chaplin. But, at that time, these great exponents of a pantomimic art, which gives the maximum of emotional expression with the minimum of mental effort, had not been eclipsed by the rising splendor of a Dempsey or a Carpentier.

Of the last count in Pope Benedict's indictment, I shall say but little. It is more appropriate for the members of that great and noble profession which is more intimately concerned with the spiritual advance of mankind. It is enough to say that, while the church as an institution continues to exist, the belief in the supernatural and even in the spiritual has been supplanted by a gross and widespread materialism.

If you agree with me in my premises then we are not likely to disagree in the conclusion that the causes of these grave symptoms are not ephemeral or superficial; but must have their origin in some deep-seated and world-wide change in human society. If there is to be a remedy, we must diagnose this malady of the human soul.

For example, let us not "lay the flattering unction to our souls" that this spirit is but the reaction of the great war.

The present weariness and lassitude of human spirit and the disappointment and disillusion as to the aftermath of the harvest of blood, may have aggravated, but they could not cause the symptoms of which I speak; for the very obvious reason that all these symptoms were in existence and apparent to a few discerning men for decades before the war. Indeed, it is possible that the World War, far from causing the *malaise* of the age, was, in itself, but one of its many symptoms.

Undoubtedly there are many contributing causes which have swollen the turbid tide of this world-wide revolution against the spirit of authority.

Thus, the multiplicity of laws does not tend to develop a law-abiding spirit. This fact has often been noted. Thus Napoleon, on the eve of the 18th Brumaire, complained that France, with a thousand folios of law, was a lawless nation. Unquestionably, the political state suffers in authority by the abuse of legislation, and especially by the appeal to law to curb evils that are best left to individual conscience.

In this age of democracy, the average individual is too apt to recognize two constitutions, one, the constitution of the State, and the second, an unwritten constitution, to him of higher authority, under which he believes that no law is obligatory which he regards as in excess of the true powers of government. Of this latter spirit, the widespread violation of the prohibition law is a familiar illustration.

A race of individualists obey reluctantly, when they obey at all, any laws which they regard as unreasonable or vexatious. It has always flourished, and the so-called "best people" have not been innocent. Thus nearly all women are involuntary smugglers. They deny the authority of the state to impose a tax upon a Paquin gown. Again, our profession must sorrowfully confess that the law's delays and laxity in administration breed a spirit of contempt, and too often invite men to take the law into their own hands. These causes are so familiar that their statement is a commonplace.

Proceeding to deeper and less recognized causes, some would attribute this spirit of lawlessness to the rampant individualism which began in the Eighteenth Century, and which has steadily and naturally grown with the advance of democratic institutions. Undoubtedly, the excessive emphasis upon the rights of man, which marked the political upheaval of the close of the Eighteenth and the beginning of the Nineteenth Century, has contributed to this malady of the age. Men talked, and still talk, loudly of their rights, but too rarely of their duties. And yet if we were to attribute the malady merely to excessive individualism, we would again err in mistaking a symptom for a cause.

To diagnose truly this malady we must look to some cause that is coterminous in time with the disease itself and which has been operative throughout civilization. We must look for some widespread change in social conditions, for man's essential nature has

changed but little, and the change must, therefore, be of environment.

I know of but one change in environment that is sufficiently widespread and deep-seated to account adequately for this malady of our time.

Beginning with the close of the Eighteenth Century, and continuing throughout the Nineteenth, a prodigious transformation has taken place in the environment of man, which has done more to revolutionize the conditions of human life than all the changes that had taken place in the 500,000 preceding years which science has attributed to man's life on the planet. Up to the period of Watt's discovery of steam vapor as a motive power, these conditions, so far as the principal facilities of life, were substantially those of the civilization which developed eighty centuries ago on the banks of the Nile and later on the Euphrates. Man had indeed increased his conquest over nature in later centuries by mechanical inventions, such as gunpowder, telescope, magnetic needle, printing press, spinning jenny, and hand loom, but the characteristic of all those inventions, with the exception of gunpowder, was that they still remained a subordinate auxiliary to physical strength and mental skill of man. In other words, man still dominated the machine, and there was still full play for his physical and mental faculties. Moreover, all the inventions of preceding ages, from the first fashioning of the flint to the spinning wheel and the hand-lever press, were all conquests of the tangible and visible forces of nature. With Watt's utilization of steam vapor as a motive power, man suddenly passed into a new and portentous chapter of his varied history. Thenceforth, he was to multiply his powers a thousandfold by the utilization of the invisible powers of nature—such as vapor and electricity. This prodigious change in his powers, and therefore his environment, has proceeded with ever-accelerating speed. Man has suddenly become the super-man. Like the giants of the ancient fable, he has stormed the very ramparts of Divine power, or, like Prometheus, he has stolen fire of omnipotent forces from Heaven itself for his use. His voice can now reach from the Atlantic to the Pacific, and, taking wings in his aeroplane, he can fly in one swift flight from Nova Scotia to England, or he can leave Lausanne and, resting upon the icy summit of Mt. Blanc—thus, like "the herald, Mercury, new-lighted on a heaven-kissing hill"—he can again plunge into the void, and thus outfly the eagles themselves.

In thus acquiring from the forces of Nature almost illimitable power, he has minimized the necessity for his own physical exertion or even mental skill. The machine now not only acts for him, but almost *thinks* for him. Is it surprising that so portentous a change should have fevered his brain and disturbed his mental equilibrium? A new ideal, which he proudly called "progress," obsessed him, the ideal of quantity and not quality. His practical religion became that of acclceration and facilitation—to do things more quickly and easily—and thus to minimize exertion became his great objective. Less and less he relied upon the initiative of his own brain and muscle, and more and more he put his faith in the power of machinery to relieve him of labor.

This almost infinite multiplication of human power has tended to intoxicate man. The lust for power has obsessed him, without regard to whether it be constructive or destructive. He consumes the treasures of the earth faster than it produces them, deforesting its surface and disemboweling its hidden wealth. As he feverishly multiplied the things he desired, even more feverishly he multiplied his wants. To gain these, he sought the congested centers of human life. And while the world, as a whole, is not over-populated, the leading countries of civilization were subjected to this tremendous pressure. Europe, which, at the beginning of the Nineteenth Century, barely numbered 100,000,000 people, suddenly grew nearly fivefold. Millions left the farms to gather into the cities to exploit their new and seemingly easy conquest over nature. In our own country, as recently as 1880, only 15 per cent of our people were crowded in the cities, 85 per cent remained upon the farms and still followed that occupation, which, of all occupations, still preserves, in its integrity, the dominance of human labor over the machine. Today, 52 per cent of our population is in the cities, and with many of them existence is both feverish and artificial. While they have employment, many of them do not themselves work, but spend their lives in watching machines work. The result has been a minute subdivision of labor that has denied to many workers the true significance and physical benefit of labor.

The direct results of this excessive tendency to specialization whereby not only the work but the worker becomes divided into mere fragments, are threefold. Hobson, in his work on John Ruskin, thus classifies them. In the first place, *narrowness*, due to the confinement to a single action in which the elements of human skill or strength are largely eliminated; secondly, *monotony*, in the assimilation of man to a machine, whereby seemingly the machine dominates man and not man the machine, and, thirdly, *irrationality*, in that work became disassociated in the mind of the worker with any complete or satisfying achievement. The worker does not see the fruit of his travail, and cannot therefore be truly satisfied. To spend one's life in opening a valve to make a part of a pin is, as Ruskin pointed out, demoralizing in its tendencies. The clerk who only operates an adding machine, has little opportunity for self-expression. Thus, millions of men have lost both the opportunity for real physical exertion, the incentive to work in the joyous competition of skill, and finally the reward of work in the sense of achievement.

More serious than this, however, has been the destructive effort of quantity—the great object of the mechanical age, at the expense of quality. Take, for example, the printing press: No one can question the immense advantages which have flowed from the increased facility for transmitting ideas. But may it not be true that the thousandfold increase in such transmission by the rotary press has also tended to muddy the current thought of the time? True it is that the printing press has piled up great treasures of human knowledge which make this age the richest in accessible information. I am not speaking of knowledge, but rather of the current thought of the living generation. I gravely question whether it has the same clarity as the brain of the generation which fashioned the Constitution of the United States. Our fathers could not talk over the telephone for three thousand miles, but have we surpassed them in thoughts of enduring value? Washington and Franklin could not travel sixty miles an hour in a railroad train, or twice that distance in an aeroplane, but does it follow that they did not travel to as good purpose as we, who scurry to and fro like the ants in a disordered ant-heap? Unquestionably,

man of today has a thousand ideas suggested to him by the newspaper and the library where our ancestors had one; but have we the same spirit of calm inquiry and do we coordinate the facts we know as wisely as the fathers did?

Athens in the days of Pericles had but thirty thousand people and few mechanical inventions; but she produced philosophers and poets and artists whose works, after 2,000 years, still remain the despair of the would-be imitators. Shakespeare had a theater with the ground as its floor and the sky as its ceiling; but New York, which has fifty theaters and annually spends $100,000,000 in the box offices of its varied amusement resorts has never in two centuries produced a single play that has lived. Today, man has a cinematographic brain. A thousand images are impressed daily upon the screen of his consciousness and they are as fleeting as moving pictures in a cinema theater. The American press prints every year over 29,000,000,000 issues. No one can question its educational possibilities. For the best of all colleges is the University of Gutenberg. If it printed only the truth, its value would be infinite; but who can say in what proportions of this vast volume of printed matter is the true and the false?

Before the beginning of the present mechanical age, the current of living thought could be likened to a mountain stream, which though confined within narrow banks yet had waters of transparent clearness. May not the current of thought of our time be compared with the mighty Mississippi in the period of a spring freshet? Its banks are wide and its current swift, but the turbid stream that flows onward is one of muddy swirls and eddies and overflows its banks to their destruction.

The great indictment, however, of the present age of mechanical power is that it has largely destroyed the spirit of work. The great enigma which it propounds to us, and which, like the riddle of the Sphinx, we will solve or be destroyed, is this:

Has the increase in the potential of human power, through thermodynamics, been accompanied by a corresponding increase in the potential of human character?

To this life and death question, a great French philosopher, Le Bon, writing in 1910, replied that the one unmistakable symptom of human life was "the increasing deterioration in human character," and a great physicist has described the symptom as "the progressive enfeeblement of the human will." In a famous book, "Degeneration," written at the close of the Nineteenth Century, Max Nordau, as a pathologist, explains this tendency by arguing that our complex civilization has placed too great a strain upon the limited nervous organization of man. A great financier once said of an existing financial condition that it was suffering from "undigested securities," and, paraphrasing him, is it not possible that man is suffering from undigested achievements and that his salvation must lie in adaptation to a new environment, which, measured by any standard known to science, is a thousandfold greater in this year of grace than it was at the beginning of the Nineteenth Century?

No one would be mad enough to urge such a retrogression as the abandonment of labor-saving machinery would involve. Indeed, it would be impossible; for, in speaking of its evils, I freely recognize that not only would civilization perish without its beneficent aid, but that every step forward in the history of man has been coincident with, and in large part attributable to a new mechanical invention. But suppose the development of labor-saving machinery should reach a stage where all human labor was eliminated, what would be the effect on man? The answer is contained in an experiment which Sir John Lubbock made with a tribe of ants. Originally the most voracious and militant of their species, when denied the opportunity for exercise and freed from the necessity of foraging for their food, in three generations they became anæmic and perished. Take from man the opportunity of work and the sense of pride in achievement and you have taken from him the very life of his existence. Robert Burns could sing as he drove his plowshare through the fields of Ayr. Today millions, who simply watch an automatic infallible machine, which requires neither strength nor skill, do not sing at their work but too many curse the fate which has chained them like Ixion to a soulless machine.

The evil is even greater.

The specialization of our modern mechanical civilization has caused a submergence of the individual into the group or class. Man is fast ceasing to be the unit of human society; self-governing groups are becoming the new units. This is true of all classes of men, the employer as well as the employee. The true justification for the anti-monopoly statutes, including the Sherman anti-trust law, lies not so much in the realm of economics as in that of morals. With the submergence of the individual, whether he be capitalist or wage earner, into a group, there has followed the dissipation of moral responsibility. A mass morality has been substituted for individual morality, and, unfortunately, group morality generally intensifies the vices more than the virtues of man.

Possibly the greatest result of the mechanical age is this spirit of organization. Its merits are manifold and do not require statement; but they have blinded us to the demerits of excessive organization. We are now beginning to see—slowly, but surely—that a faculty of organization which, as such, submerged the spirit of individualism, is not an unmixed good. Indeed, the moral lesson of the tragedy of Germany is the demoralizing influence of organization carried to the nth power. No nation was ever more highly organized than this modern state. Physically, intellectually and spiritually, it had become a highly-developed machine; and its dominating mechanical spirit so submerged the individual that, in 1914, the paradox was observed of an enlightened nation that was seemingly destitute of a conscience. What was true of Germany, however, was true—although in lesser degree—of all civilized nations. In all of them, the individual had been submerged in group formations, and the effect upon the character of man has not been beneficial.

This may explain the paradox of so-called "progress." It may be likened to a great wheel, which, from the increasing domination of mechanical forces, developed an ever-accelerating speed, until, by centrifugal action, it went off its bearings in 1914 in an unprecedented catastrophe. As man slowly pulls himself out of that gigantic wreck and recovers consciousness, he begins to realize that speed is not necessarily progress.

Of all this, the Nineteenth Century, in its exultant pride in its conquest of the invisible forces, was almost blind. It not only accepted progress as an unmistakable fact—mistaking, however, acceleration and

facilitation for progress—but in its mad pride believed in an immutable law of progress which, working with the blind forces of machinery, would propel man forward. A few men, however, standing on the mountain ranges of human observation, saw the future more clearly than did the mass. Emerson, Carlyle, Ruskin, Samuel Butler, and Max Nordau, in the Nineteenth Century, and, in our time, Ferrero, all pointed out the inevitable dangers of the excessive mechanization of human society. Their prophecies were unhappily as little heeded as those of Cassandra.

One can see the tragedy of the time, as a few saw it, in comparing the first Locksley Hall of Alfred Tennyson, written in 1827, with its abiding faith in the "increasing purpose of the ages" and its roseate prophecies of the golden age when the "war-drum would throb no longer and the battle flags be furled in the Parliament of Man and the Federation of the World," and the later Locksley Hall, written sixty years later, when the great spiritual poet of our time gave utterance to the dark pessimism which flooded his soul:

> Gone the cry of "Forward, Forward," lost within a growing gloom;
> Lost, or only heard in silence from the silence of a tomb.
> Half the marvels of my morning, triumphs over time and space,
> Staled by frequence, shrunk by usage, into commonest commonplace!
> Evolution ever climbing after some ideal good,
> And Reversion ever dragging Evolution in the mud.
> Is it well that while we range with Science, glorying in the time,
> City children soak and blacken soul and sense in city slime?

In this too lengthy address, with which I have afflicted you, I must seem to you unduly pessimistic. I fear that this is the case with most men, who, like Dante, have crossed their fiftieth year and find themselves in a "dark and sombre wood." You will probably subject me to the additional reproach that I suggest no remedy. There are many palliatives for the evils which I have discussed. To rekindle in men the love of work for work's sake and the spirit of discipline, which the lost sense of human solidarity once inspired, would do much to solve the problem, for work is the greatest moral force in the world. But I must frankly add that I have neither the time nor the qualifications to discuss the solution of this grave problem.

If we of this generation can only recognize that the evil exists, then the situation is not past remedy; for man has never yet found himself in a blind alley of negation. He is still "captain of his soul and the master of his fate," and, to me, the most encouraging sign of the times is the persistent evidence of contemporary literature that thoughtful men now recognize that much of our boasted progress was as unreal as a rainbow. While the temper of the times seems for the moment pessimistic, it merely marks the recognition of man of an abyss whose existence he barely suspected but over which his indomitable courage will yet carry him.

I have faith in the inextinguishable spark of the Divine which is in the human soul and which our complex mechanical civilization has not extinguished. Of this, the World War was in itself a proof. All the horrible resources of mechanics and chemistry were utilized to coerce the human-soul, and all proved ineffectual. Never did men rise to greater heights of self-sacrifice or show a greater fidelity "even unto death." Millions went to their graves, as to their beds, for an ideal; and when that is possible, this Pandora's box of modern civilization, which contained all imaginable evils, as well as benefits, also leaves hope behind.

I am reminded of a remark that the great Roumanian statesman, Taku Jonescu, made during the Peace Conference at Paris. When asked his views as to the future of civilization, he replied: "Judged by the light of reason, there is but little hope, but I have faith in man's inextinguishable impulse to live." Thank God, that cannot be affected by any change in man's environment! For even when the caveman retreated from the advance of the polar cap, which once covered Europe with Arctic desolation, he not only defied the elements but showed even then the love of the sublime by beautifying the walls of his icy prison with those mural decorations which were the beginning of art. Assuredly, the man of today, with the Godly heritage of countless ages, can do no less. He has but to diagnose the evil and he will then, in some way, meet it.

But what can the law and our profession do in this warfare against the blind forces of nature?

It is easy to exaggerate the value of all political institutions; for they are generally on the surface of human life and do not reach down to the deep undercurrents of human nature. But the law can do something to protect the soul of man from destruction by the soulless machine.

It can defend the spirit of individualism. It must champion the human soul in its God-given right to exercise freely the faculties of mind and body. We must defend the right to work against those who would either destroy or degrade it. We must defend the right of every man not only to join with others in protecting his interests, whether he is a brain worker or a hand worker—for without the right of combination the individual would often be the victim of giant forces—but we must vindicate the equal right of an individual, if he so wills, to depend upon his own strength.

The tendency of group morality to standardize man—and thus reduce all men to the dead level of an average mediocrity—is one that the law should combat. Its protection should be given to those of superior skill and diligence, who ask the due rewards of such superiority. Any other course, to use the fine phrase of Thomas Jefferson in his first inaugural, is to "take from the mouth of labor the bread it has earned."

Of this spirit of individualism, the noblest expression is the Constitution of the United States. That institution has not wholly escaped the destructive tendencies of a mechanical age. It was framed at the very end of the pastoral-agricultural age and at a time when the spirt of individualism was in full flower. The hardy pioneers who, with their axes, made straight the pathway of an advancing civilization, were sturdy men who need not be undervalued to us of the mechanical age. The prairie schooner, which met the elemental forces of nature with the proud challenge: "Pike's Peak or bust," produced as fine a type of manhood as the age which travels either in Mr. Ford's "flivver" or the more luxurious Rolls-Royce.

The Constitution was framed in the period that marked the passing of the primitive age and the dawn of the day of the machine. Watt had discovered the potency of steam vapor as a motive power; but its only use, as known to the fathers, was for pumping water out of the mines. When the framers of the Constitution met in high convention in Philadelphia in the summer of 1787, a Connecticut Yankee, John Fitch, was then also working in Philadelphia upon his steam-

boat; but twenty years were to pass before the prow of the "Clermont" was to part the waters of the Hudson, and nearly a half century before transportation was to be revolutionized by the utilization of Watt's invention in the locomotive. Of the wonders of the steamship, the railroad, the telegraphic cable, the wireless, the gasoline engine, and a thousand other mechanical miracles, the fathers did not even dream.

It is not surprising that this epoch-making change in human power, which has so profoundly and destructively transformed social conditions, has not been without its effect upon the Constitution of 1787. Steam and electricity have disturbed the nice equilibrium between the nation and the states, which the fathers intended to endure for all time. In this respect, if they could revisit "the glimpses of the moon," they would, in some respects, find difficulty in recognizing their own handiwork. Even Alexander Hamilton might be amazed in seeing that the Federal Government, now one of the most powerfully unified states of the world, has by the direct, and especially the indirect, exercise of its powers so largely invaded the reserved powers of the states. The mechanical civilization has greatly modified the dual character of our Government.

If, however, in this respect, the Constitution has proven little more than a sandy beach, which the tidal waves of elemental forces have slowly eroded, yet we can proudly claim that in another and more important respect the Constitution has withstood the ceaseless washing of the waves of changing circumstances, as the Rock of Gibraltar itself.

The greatest and noblest purpose of the Constitution was not alone to hold in nicest equipoise the relative powers of the nation and the states, but also to maintain in the scales of justice a true equilibrium between the rights of government and the rights of an individual. It does not believe that the state, much less the caprices of a fleeting majority, is omnipotent, or that it has been sanctified with any oil of anointing, such as was once assumed to give to the monarch infallibility. About the individual, the Constitution draws the solemn circle of its protection. It defends the integrity of the human soul.

In other governments, these fundamental decencies of liberty rest upon the conscience of the legislature. In our country they are part of the fundamental law, and, as such, enforceable by judges sworn to defend the integrity of the individual as fully as the integrity of the state. Therefore, the greatest service that the Bench and Bar can render in combating the evils of a mechanical age is to defend and preserve in its full integrity the Constitution of our fathers.

That Constitution was their "vision." And when did a nobler one ever inspire men in the political annals of mankind? Without that vision to restrain each succeeding generation of Americans from the tempting excesses of political power, the American Commonwealth, with its great heterogeneous democracy, might conceivably perish.

Thank God, that vision still remains with the American people and still leads them to ever-higher achievements, for in all the mad changes of a frenzied hour, the American people has not yet lost faith in or love for the Constitution of the fathers! That vision will remain with us as long, and no longer, as there is in the hearts of the American people a conscious and willing acquiescence in its wisdom and justice. Obviously, it can have no inherent vigor to perpetuate itself. If it ceases to be of the spirit of the people, then the yellow parchment whereon it is inscribed can avail nothing. When that parchment was last taken from the safe in the State Department, the ink, in which it had been engrossed nearly 134 years ago, was found to be faded. We must write the compact, not with ink upon parchment, but with "letters of living light"—to use Webster's phrase—upon the hearts of our people.

Let us, then, as its interpreters and guardians, and, as such, the civilian soldiers of the state, do all that in us lies to preserve this inspired vision of the Fathers; for again the solemn warning of the wise man of old recurs to us:

> Where there is no vision, the people perish; but he that keepeth the law, happy is he.

Bill to Fuse Barristers and Solicitors

A bill has recently been introduced into the British House of Commons by Mr. Charles Percy, M. P., to amalgamate the two branches of the legal profession, solicitors and barristers. One of the arguments that is being used against it is the assertion that the solicitors themselves do not wish the bars taken down between them and the other branch of the law. It seems that the Law Society, the organization of solicitors, a few years ago, when the attendance at a meeting was very small, voted in favor of fusion. Later, however, a poll of a very much larger part of the membership resulted in practically a two-to-one vote against it.

One of the points made by the advocates of fusion among the solicitors is discrimination against that branch in respect to certain judicial positions. For instance, County Court Judgeships are confined to barristers. The Law Journal, replying to this suggestion of discrimination, points out that there are some 500 Registrarships which are held by solicitors, and if the solicitors are to share with barristers the qualification to be appointed to these judgeships, the barristers might not unreasonably claim the right to become County Registrars. Further answering the suggestion of discrimination in public appointments against the solicitors' branch, it says that solicitors usually hold such places as Chancery Masters, Chancery Registrars, Taxing Masters, High Court District Registrars, Clerks of the Peace, Clerks to Justices, Clerks to County Councils, and Town Clerks. In brief, the public offices for which fusion would render solicitors eligible are far less numerous than those which are now exclusively held by them.

Some Prefer Delay Over Here

"It is a grave reproach to English justice that every year two or three hundred accused persons should be kept in prison three or four months before they are brought to trial, a substantial number of whom are found to be innocent when at length they are brought before a jury. The proposals of the Home Secretary to remove this blot from our legal system—proposals which ought long ago to have been brought forward—will be awaited with keen interest, more particularly as they may involve the reform of the circuit system in other respects."—*The Law Journal.*

OUR COMMON INHERITANCE OF LAW

How for the Last Century and a Half Lawyers in Great Britain and America, Building Independently on the Same Foundation, Have Erected Corresponding Structures*

By The Rt. Hon. Sir John A. Simon, K. C.
Former Attorney-General of England

EIGHTEEN summers ago, in weather nearly as sultry as this, you, Mr. Root, were sitting in the Foreign Office in London as a member of the International Tribunal appointed to define the boundaries of Alaska; and I was the most junior and the most obscure of the counsel appearing on behalf of the British Government. It is a peculiar pleasure for me to appear before you again eighteen years later:—and when I see before me this array of American lawyers and realize that I am, perhaps, the only member of the English Bar present at this gathering, I cannot be too thankful that this is no occasion of controversy between the lawyers of the one country and those of the other; but is, instead, an occasion when we celebrate and put on record our feelings of mutual friendship and good will. I am reminded of the reply of Father Healy, when that learned and witty cleric was asked by one of his flock what was the difference between the Cherubim and the Seraphim. Father Healy replied, "Well, there used to be a difference between them, but they have made it up."

And if anything could add to my pride and pleasure in being your guest here today, it would be that I am invited to follow my friend Mr. John W. Davis, whom all Englishmen hold in the highest admiration and regard. Our only complaint against American ambassadors in London is that they stay there too short a time. Sir Walter Scott once observed that it was just as well that horses and dogs did not live as long as human beings, for if they did we should never get over their loss. And Mr. Davis will not, I feel sure, take it amiss if I compare British affection for him with their devotion to the most noble and faithful of the friends of man. I will venture to repeat of him, and of all Americans like him, what I took occasion to say at the Independence Day banquet in London last year—that I am convinced Shakespeare had Mr. Davis in mind when, in his play called "The Tempest," he puts in the mouth of Miranda, when her Enchanted Isle is first visited by Ferdinand and his comrades from overseas, the ecstatic exclamation,—

> O, brave new world
> To have such people in it!

Mr. Davis has spoken of the fraternity of the Bar, and I rejoice to address you today not merely as my brothers-in-law, but as my brethren. We are sons of the same mother, and we inherit a common tradition. The Common Law is like a rich seam of precious metal lying deep below the surface of the life of Britain, and this rich seam outcrops again in the North American Continent, and has there been worked and assayed and refined and applied by diligent and skillful toilers in nearly every province of Canada and nearly every state of the Union, for the progress and development of mankind. It has overcome distance and withstood the assaults of time. I do not forget that in the early days of the American Republic there was a movement to repudiate the Common Law on the ground that it came from England. It would be as reasonable for Americans to repudiate the game of golf because it comes from Scotland; instead of which, the authors of your independence lost no time in making a tee-shot into Boston harbor, and naming one of your early battlefields Bunker Hill. And, indeed, the Common Law, as you and I understand it, is not some British institution which has been imposed or foisted upon Americans, it is the common possession of both countries, which has been preserved and developed by the energies and the intelligence of each; and certainly no nation owes more to its lawyers than does this great Republic. When the French Revolutionists killed the famous scientist Lavoisier they shouted "The Republic has no need of chemists," but the founders of the American Republic made no such mistake about lawyers. Of the 56 signatories to your Declaration of Independence no less than 25 were lawyers; while of the 55 members of the Federal Constitutional Convention 31 were lawyers. It will be true, I think, to say that in these great acts of constructive statesmanship, lawyers played as large a part in America in the Eighteenth Century as they had done in England in the Seventeenth. And now that the light of history shines high in the heavens and has dispelled the mists of prejudice and passion, let us admit that in both cases it was the devotion of lawyers to constitutional liberty which laid broad and deep the foundations of the two governments.

We must not forget that the Common Law at the end of the Eighteenth Century was as yet undeveloped in many of its modern applications. Save for the luminous and comprehensive Treatise of William Blackstone, there was hardly a law book which could be described as attractive reading. Coke on Littleton I have always regarded as a repulsive authority, and the Eighteenth Century Digests were presumably so called because their contents were quite indigestible. Coke, indeed, claimed that the Common Law was "the perfection of reason;" but a system which punished witchcraft by fearful penalties; which ascertained whether a man was mute by malice or by visitation of God, by piling weights upon his body heavier than he could bear to see whether he would cry out; and which chiefly concerned itself with the incidents of feudal tenures and the niceties of written pleadings, may well have seemed unsuited to the needs of the vigorous and progressive Republic of America. All honor, then, to the lawyers of this Nation who realized that there was precious gold hidden beneath this dross and who extracted from the ancient Common Law so many of those modern applications which have made it the basis of the jurisprudence of the English-speaking world.

It is instructive and interesting to observe how far during the last 150 years lawyers in the two countries, building independently on the same foundation of the Common Law have erected a corresponding structure. The world in which the Common Law had its roots

*Address delivered at the Forty Fourth Annual Meeting of the American Bar Association, at Cincinnati, O., August 31, 1921.

knew nothing of modern methods of transportation or communication, and it remained to be seen whether the ramifications of banking and insurance and every form of business could be served by new applications of ancient principles. It is a wonderful proof of the truly scientific character of law that alike in the old world and in the new, judges and lawyers trained in the same school should have found the same solution for the same difficulties. The works of Joseph Storey who, knowing the bearings of every case, navigated from headland to headland, and the judgments of John Marshall, who was like a mariner with a compass by which he could find his way across uncharted seas so as to proceed straight across to the desired and destined haven, may almost be said to be "familiar as household words" to a trained English lawyer. It is one of my earliest recollections of the practice of the law how the English Court of Appeal was convinced by reference to a chapter in Mr. Justice Holmes' profound and masterly analysis of the Common Law, that a previous decision of the English High Court was wrong, and that the true principle was to be found expounded in his luminous treatise. And, just before I left England, I was arguing before the House of Lords the question whether, what we call "bonus shares," and you call "stock dividends," were liable to income tax, and I had the satisfaction both of winning my case and of establishing the true principle of law largely by means of citing a recent judgment of Mr. Justice Pitney in the Supreme Court of the United States.

Equally remarkable is the development in the two countries, side by side, of that branch of the law which deals with personal rights. An interesting book might be written by an English lawyer and an American lawyer jointly, comparing and contrasting provisions for securing the rights of married women, for protecting children, for enabling the insolvent debtor who has done his best but is overwhelmed by misfortune, to have another chance, for admitting parties in civil and criminal cases as witnesses in their own behalf, and for removing disabilities of sex. We have at length followed the American lead in throwing open the profession of the law to women.

I think it will be found, if a comparison were made, that the main differences between the private law of England and America are more in the region of practice and procedure than in the realm of substantive rights. Nearly fifty years ago we swept away the distinction between law and equity, and it may fairly be said that the existing system in England is one which does not deprive a man of his rights because he has come to the wrong court. The old system of pleading has been abolished, with the result that more simplicity has been introduced into the preliminaries of trial, though with a sacrifice of precision which many of the best English lawyers realize to be a misfortune. So far as England is concerned, the challenge of a juryman is practically unknown, and we have not found it necessary to inquire into the antecedent knowledge of the jury, but have thought it sufficient to rely upon their sense of responsibility as citizens. The use of juries, however, has much decreased of late, and though for my part I think twelve jurymen much the best tribunal to give a competent decision on insoluble problems, such as the amount of damages which should be given for a broken leg, or rendered to a lady who has lost her husband in a railway accident, and married again, there is an undoubted tendency in the old country to dispense with their assistance in cases which formerly would have required it. But I think the main claim which an English lawyer would seek to make in favor of his own procedure is on the score of speedy trial. Justice delayed is justice denied, and though our circuit system sometimes leaves an accused person in custody for as much as two or three months before his case is heard, the trial itself is carried through without other delays, the opportunities for appeal are circumscribed, we have abolished much of the technicality which formerly offered a way to escape for the guilty, and the carrying out of the sentence promptly follows conviction. In civil cases great efforts have been made to avoid delay and it is possible in our commercial courts to have a case tried within a few weeks or at most a few months of the issue of the writ.

But these differences are all differences of detail in which each country may have something to teach and something to learn. The great fact is, that English law and American law, derived from the same origin, are pursuing the same goal, and in our intercourse with one another we are realizing more completely the solidarity of the friendship of the English-speaking world.

What are the unseen but unshakable foundations upon which Anglo-American friendship rests? It is a friendship the peaceful continuance of which over a full century of time we were preparing to celebrate in that year of destiny 1914. It is a friendship which since that date has been cemented and consecrated in the valley of the shadow of death; by heroic suffering and triumphant effort in a common cause. In Flanders and in France British and American dust lies mingled. Both nations share, in the immortal words of Abraham Lincoln, in the solemn pride that is theirs to have laid so costly a sacrifice upon the altar of freedom. These young lives, so boldly offered, and so bravely surrendered, are at once a token and a pledge. They are a token of that unity of spirit pervading alike this young nation and the old land from whose loins she sprang, which no width of ocean could divide and no memory of ancient feud could destroy. And they are a pledge for the future of Anglo-American friendship and thereby for the peace of the world. Love of Liberty, a joint Literature, the same Language, and the Common Law—these are the four Evangelists of the Gospel of Anglo-American friendship; these are the Big Four who can best guarantee that hands will be stretched across the sea and grasped in a common resolve to save those for whom this stupendous sacrifice was made from a renewal of strife. And among these influences which make for the reconciliation of mankind and the saving of humanity from the unspeakable horrors of armed conflict, Law, in its highest and broadest sense, is one of the chief. It is the instrument of Justice; it is the handmaid of Order; it is the guarantor of Individual Right; it is the arbiter of Dispute and the Reconciler of Difference; it is the Cement which binds together the fabric of human institution; it is the standard which society erects to guide those that are tempted, to recall to the true path those who are led astray and to symbolize the fact that each one of us cannot live for himself but must serve and work for the common good. Let us, then boldly proclaim our pride in this great profession; our resolve to bring no dishonor upon its escutcheon and our belief in the value of the contribution which it may make to the future advancement of the world.

CORDENIO ARNOLD SEVERANCE

President of the American Bar Association

THERE are few positions more highly esteemed by lawyers, or more honorable or gratifying to their recipients than that of President of the American Bar Association. An election to that office is a certificate of character, ability, achievement, and of a national reputation and acquaintance. Witness the names of the illustrious men who have received it. And, when this honor has been conferred upon one born and educated in a farming community in Minnesota, far from the great centers of population and their universities and colleges, as it was by the election of Mr. Severance, it is interesting to note the way in which he developed, the character, reputation and acquaintance that produced such a result.

Cordenio Arnold Severance was born at Mantorville, in Dodge County, Minnesota, on June 30, 1862. He comes from New England ancestry through his father, E. C. Severance, and also through his mother, Mrs. Amanda Julia Arnold Severance. He was educated through the common and high schools of Mantorville, through the preparatory course for, and two years of the college course in Carlton College of Northfield, Minnesota, which in 1919 conferred upon him the honorary degree of Doctor of Laws, and through the study of the law with Honorable Robert Taylor, one of the leading attorneys of Minnesota. He was admitted to the Bar in 1883 and he entered the law office of Honorable Cushman K. Davis in St. Paul in 1885.

In 1887 he joined with Senator Davis, who had been Governor of Minnesota and who, from 1887 until his death in 1900 when he was Chairman of the Committee on Foreign Relations of the Senate, was United States Senator from Minnesota, and Honorable Frank B. Kellogg, now and since 1916 United States Senator from Minnesota, and a few years ago President of the American Bar Association, in forming the partnership of Davis, Kellogg and Severance, which became one of the most efficient, influential and successful law firms in the nation. In 1889 he was married to Miss Mary Frances Harriman, daughter of General Samuel Harriman of Wisconsin. Mrs. Severance is also of New England ancestry through both of her parents.

Mr. Severance has been President of the Minnesota Bar Association and of the Bar Association of Ramsey County, the county in which St. Paul is located. During the late war he temporarily relinquished his practice as a lawyer, and as Chairman of the Commission of the American Red Cross to Serbia, served in Southern Serbia and spent considerable time in Saloniki and other parts of Macedonia. In 1920, as a trustee of the Carnegie Foundation for International Peace, he visited Belgrade, the capital of Serbia, to arrange for the construction of a University Library donated to the University of Belgrade by the Foundation. He is a member of the Society of Colonial Wars and of numerous clubs of St. Paul, New York, Chicago and San Francisco.

From 1887 to the present day he has devoted himself to the active practice of the law. His law firm, originally Davis, Kellogg and Severance, but now, through the decease of Senator Davis, the retirement from it of Senator Kellogg and the entry of Mr. George W. Morgan, Davis, Severance and Morgan, has always had a large and diversified practice involving great financial interests, imposing serious responsibility upon its members and requiring their appearance and service in numerous courts in many parts of the United States. He was Special Assistant to the Attorney General and argued in the trial court and in the Supreme Court the suit of the United States vs. The Union Pacific Railroad Company and the Southern Pacific Railroad Company to dissolve their combination in restrain of trade, which the Supreme Court decided in favor of the Government without dissent. He was one of the counsel for the defendant in the government suit to dissolve the United States Steel Corporation, participated in the trial of and argued the case in the trial court and in the Supreme Court, with a result equally favorable to his client. His practice before the Interstate Commerce Commission and the courts involving railroad rates has been large, and he has ben engaged in litigation of great importance over the taxation of many corporations and other clients. His persistent activity in his profession, however, may not be further followed here.

Mr. Severance is endowed with a clear, analytical, powerful intellect, always alert, quick to perceive and to act, with a sound and conservative judgment, and with the saving gift of practical common sense in the application of the law to the facts in his opinions on legal questions and in the determination of the business policies of his clients. His mind is stored with a profound and accurate knowledge of the general principles of the law and he has an abiding conviction of the necessity of the further knowledge of the statutes, decisions and technical rules that may condition a specific case or question before advising or acting, a conviction which he does not fail to heed. He has had a wide and instructive experience in advising the business policies of those engaged in the conduct of great corporations and the management of important interests.

In court and council he is dignified, calm and courteous. In the trial of his cases he is bold and vigorous in attack, shrewd and ingenious in defense. His arguments are free from verbosity, clear, concise and logical. His statements of the evidence and of the condition of the statutes and decisions usually receive the assent of opposing counsel and the credence of the courts, leaving undetermined only their effect upon the question at issue. In the fields of general literature, science, art and music his knowledge is comprehensive and his taste is informed and refined. In business and social circles his genial manner, the faithful representative of his generous, kindly and helpful disposition, and his lively conversations replete with information, wit and anecdote, command popularity and invoke friendship. His services as an entertainer, as presiding officer or toastmaster at banquets are constantly in demand, and few are as happy and pleasing as he in the discharge of the duties of such a position.

The legal residence of Mr. Severance is St. Paul, but when Mr. and Mrs. Severance are in Minnesota they usually occupy Cedarhurst, their stately and spacious mansion, filled with treasures of art, souvenirs of their travels through Europe, the Orient and other lands, standing by the side and under the wide spreading branches of tall and magnificent ancient trees on

CORDENIO A. SEVERANCE
President American Bar Association

their farm of some four hundred acres of the most fertile lands in the Northwest at Cottage Grove, about twenty miles southeast of St. Paul. Here, when in Minnesota, they are constantly extending hospitality to their friends and acquaintances, including visitors to the Northwest, eminent in various walks of life, with a genuine satisfaction in giving pleasure to others that is equaled only by the delight of their guests.

In New England, where the ancestors of Mr. Severance resided, the time was, and perhaps still is, that one of the highest compliments that could be paid to one was to say that he was a capable man, for that was to say in the parlance of that country, that, whatever the obstacles or difficulties, he was able to find a way to reach the end desired. One cannot contemplate the career of Mr. Severance and have an acquaintance with him without the conviction that he is able to find a way, that he is a capable man—nay, more, that he is a past master in the art of bringing things desired to pass, and the members of the American Bar Association need have no fear that what ought to be done and can be done by its President during his term of office will fail of accomplishment.

ADEQUATE MACHINERY FOR JUDICIAL BUSINESS

Chief Justice Taft, in Informal Address at Cincinnati Meeting, Approves Pending Bill Providing for Additional Federal District Judges and for Introduction of Executive Principle of Assignment to Places Most Needed*

THE main purpose of government is the maintenance of law and order and the administration of justice. In modern days of course the functions of government have been largely amplified. Whether for the benefit or otherwise of the people I am not here to discuss. But certainly the importance of impartial, prompt and effective administration of justice has not been lost in any change of view as to other functions of the government. The administration of justice is carried on by the cooperation of the courts, which interpret and enforce the law and the rights of parties under the law, and whose judgments are carried out by the Executive. The courts are constituted of judges, and it is customary to assume that the administration of the law is largely within their control, and that where the law fails, and peace and order are not maintained, and rights of parties are not promptly settled, the judges are responsible. The judges are assisted in their labors by the members of the profession of the law, and that profession must share with the judges such responsibility as may be properly charged to them in the fulfillment of their great governmental function. What I would like to emphasize in this presence, however, is that while the judges of our courts have their faults, they may rightly excuse themselves in a large degree on the ground that the fault lies with the legislative power which does not provide them with adequate machinery for the prompt and satisfactory dispatch of business.

I doubt if there is a single element in the causes that render the administration of justice with us inadequate so important as its delays. It is important, of course, that controversies be settled right, but there are many civil questions which arise between individuals in which it is not so important the controversy be settled one way or another as that it be settled. Of course a settlement of a controversy on a fundamentally wrong principle of law is greatly to be deplored, but there must of necessity be many rules governing the relations between members of the same society that are more important in that their establishment creates a known rule of action than that they proceed on one principle or another. Delay works always for the man with the longest purse. It works always in favor of the corporation as against the poor litigant. If considerations of small economy, without a full understanding of the importance of the need for an adequate judicial machine, shall prevent its creation by law, then certainly the judges, who find it impossible to do the work which crowds into the court, are not to be blamed for it.

It is pathetic to one who has an intimate knowledge of the difficulties of the administration of justice, and the real reasons for its failure in the lack of proper legislation, to note the life-consuming effort of judges to do more work than they possibly can do, in order that the arrears in their dockets may not grow. I could point to instance after instance in which judges have worn themselves down in an effort to neutralize the negligence of legislatures in this regard. I know of one in Tennessee. Tennessee has three natural divisions, East Tennessee, Middle Tennessee and West Tennessee. It is a very long State and a very big State, and a State with a great deal of law business in the three parts, especially in the mountain districts where the moonshine business is not a matter of recent growth but has always been there. For motives of false economy, while there are two districts, with separate clerk's offices and marshal's offices, there had never been more than one judge provided for the two districts. The amount of business there is overwhelming for one man. One able judge died before his time under the strain, and although the incumbent judge is one of the ablest district judges in the United States, and willing and anxious to devote all his time to the avoidance of arrears, the cases are piling up on him from year to year until his future is utterly hopeless, so far as the disposition of the business before him is concerned. A Judge for the Middle District has not been furnished. Why? Because for years there was a fear that if the bill went through, one faction or one party would be successful in securing the appointment of its candidate.

The congestion which exists in many of the districts of the United States—and it has been growing because of the gradual enlargement of the jurisdiction of the courts under the enactment by Congress of laws which are the exercise of its heretofore dormant powers—has been greatly added to by the adoption of the 18th Amendment and the passage of the Volstead

*From address to the Judicial Section of the American Bar Association at Cincinnati Aug. 30, 1921.

law. Something must be done, therefore, to give to the federal courts a judicial force that can grapple these arrears and end them.

The Attorney-General has been much impressed with the great increase in business in the courts, and has recommended to the President and to Congress the adoption of a law which, it seems to me, will much facilitate the dispatch of business in the courts of the United States. Those courts have been aided by the Workmen's Compensation Act of the United States, which has transferred to a different tribunal the settlement of controversies that took up much time in jury trials; but in spite of this the other causes of increase in business have been so great that the number of cases pending is startling in its growth and size.

The bill which the Attorney-General has presented to Congress, and which has now been introduced by the Chairman of the Judiciary Committee of the Senate, adds to the judicial force of the United States two district judges at large in each circuit, or eighteen in all. They are to have and exercise all the powers of district judges except that they may not make appointments of clerks and other officers which should obviously be made by judges knowing the vicinage. They are—as all judges must be—appointed or created, under the judicial power of the United States, granted by the third article of the Constitution, judges for life; but the provision of the new bill is that when any of these judges dies or resigns, his successor shall not be appointed unless Congress shall affirmatively so decide. This is as temporary a federal judge as the Constitution will permit. These judges at large are to be assigned by the senior circuit judge to any district in the circuit where needed and by the Chief Justice to any district in any other circuit.

In the bill is another important feature that in a sense contains the kernel of the whole progress intended by the bill. It provides for an annual meeting of the Chief Justice and the senior circuit judges from the nine circuits, and the Attorney-General, to consider required reports from district judges and clerks as to the business in their respective districts, with a view to making a yearly plan for the massing of the new and old judicial force of the United States in those districts all over the country where the arrears are threatening to interfere with the usefulness of the courts. It is the introduction into our judicial system of an executive principle to secure effective teamwork. Heretofore each judge has paddled his own canoe and has done the best he could with his district. He has been subject to little supervision, if any. Judges are men and some are not so keenly charged with the duty of constant labor that the stimulus of an annual inquiry into what they are doing may not be helpful. With such mild visitation he is likely to cooperate much more readily in an organized effort to get rid of business and do justice than under the "go-as-you-please" system of our present federal judges, which has left unemployed in easy districts a good deal of the judicial energy that may be now usefully applied elsewhere. The choice of men eligible for the position will be widely enlarged when they are to be selected from a circuit as distinguished from a district. The services of eighteen judges will be fully needed in addition to the existing judiciary even though that may be better organized in attacking arrears.

The number of bills that are pending for additional district judges in various districts is great. In almost every district there is an effort to secure an additional judge. Some should be passed without reference to this bill. On the other hand, in many districts the demand is personal and political and does not grow out of the real needs of the particular district. The adoption of the present bill will do much to satisfy every reasonable demand for additional judges on economical lines. This executive principle of using all the judicial force economically and at the points where most needed should be adopted in every state and, when adopted, will offer a remedy for a great deal of the injustice by delay that now exists. State judges, as well as federal judges, should be interested in the adoption of this Federal measure as a model for the states.

We have a great many complaints of the failure of justice in trials which have great publicity and in which the jury does not seem to do its duty. That subject I discussed in a paper read before the Bar Association in Montreal. I merely wish now to emphasize the fact that if legislatures take away the power of judges to conduct trials as they ought to be conducted, and as they have been conducted in English courts of justice and in federal courts of justice since their organization, and reduce the judges to a mere moderator, the complaint of results should not be laid at the door of the judiciary—it must rest with the legislature. The members of the profession, however, cannot escape criticism in the same way. With one or two exceptions, every state legislature is full of lawyers and the profession has a very great power, if it would exercise it, to perfect the machinery for the administration of justice. But too often lawyers in the legislature have allowed themselves to be influenced by personal considerations, by small jealousies of the power of judges, and by shaping the administration of justice to suit the character of their particular practice. It is important that the responsibility for unsatisfactory legal procedure should be put where it belongs, and much of it, I am sorry to say, is due to the members of the profession who do not do credit to the profession in the discharge of their political duties in this regard.

Of course we of the judiciary can not go off scot-free. We have defects of our own. A judge exercises a great deal of power. If he allows his head to be turned thereby, he becomes a danger to the community. If he is disliked by the Bar, it is ordinarily his own fault, because no member of the Bar is likely deliberately to antagonize him. All he has to do is to administer justice without fear or favor and teach the Bar that that is the principle upon which he is acting and he will establish a position for himself among the lawyers that they will respect and recognize. Some trial judges are lazy, especially when their powers are taken away from them by the legislature, and do not give that close attention to the conduct of trials that all judges should exercise. When a judge does not follow every item of evidence and direct all his energies to the case before him, it will get away from him and the more powerful of the counsel will have a great advantage. Even under the most adverse legislation, a judge can exercise much influence in the trial of cases if he will only possess himself of the case and keep himself advised of every turn in its progress. In addition to that, he may learn a great deal, and no matter how erudite and familiar he is with the principles of law, he still may learn something about the particular case.

OUR BRETHREN OVERSEAS

Organization of the Legal Profession in England, the Solidarity and Liberalizing Tendencies Which Distinguish It, and Certain Aspects of the Administration of English Justice*

By Hon. John W. Davis
Former Ambassador to Great Britain

A SOUND rhetorical cannon forbids the introduction of any address by an apology. No apology, however, is necessary to preface the statement that what I shall have to say to you has no tangible connection with any of the grave perplexities that vex the world today. With the hope that you may be willing to forego consideration of international and domestic problems for lighter if more familiar things, I shall ask you to listen to some random observations on the organization of the legal profession in England and the administration of English justice, for while the activities of political, commercial and professional life in Great Britain are easily translated into terms of our own experience, there is still enough of novelty to engage our interest and reward our study.

Any effort to picture the life of an English lawyer begins of necessity with the Inns of Court, those venerable institutions called by Jonson, "the noblest nurseries of liberty and humanity in the Kingdom"; or, as a less noble poet writes, in parody of Milton:

> Yet not the more,
> Cease I to roam through Elm or Garden Court
> Fig Tree or Fountain side or learned shade
> Of King's Bench Walk, by pleadings vocal made;
> Thrice hallowed shades! Where slip-shod Benchers muse,
> Attorneys haunt and Special Pleaders cruise.

Entering from the Thames embankment alongside the garden made famous by the plucking of the white rose and the red, the visitor when enfolded by the quiet precincts of the Temple, seems to walk at once in a world apart. The ancient dining hall of the Middle Temple, graced in its day by Shakespeare and his Virgin Queen, stands as it has done for centuries, filled with its long rows of tables for the students and members of the Inn, and its high table of mighty English oak for the reverend Benchers. Across Temple Lane rise the buildings of the Inner Temple, less venerable in time by reason of fire, yet preserving nevertheless traditions running to the year 1327, when the Knights Hospitalers of St. John of Jerusalem farmed the manor and place of the New Temple to the professors and students of the day. Here, too, is the old Temple church, consecrated in 1185 by Heraclius, Patriarch of Jerusalem, where the organ selected by Jeffrey of the Bloody Assizes still discourses its music to the sculptured knights upon the pavement and the pious lawyers in their pews.

Through busy Fleet Street and up Chancery Lane the way lies to the stately buildings of Lincoln's Inn adjoining Lincoln's Inn Fields, of which a contemporary wrote in 1735 that "from a heap of rubbish and the receptacle of ruffians and vagabonds is made one of the finest squares in the world." The place has had its turbulent history. In 1629, for instance, a royal messenger holding a warrant of arrest, found his man in Lincoln's Inn Gardens, but forbore to touch him out of respect for the place; but when the messenger had quietly gone into the street, about thirty gentlemen of the Inn, who felt that his very presence had been an insult to their privilege, "fetched him into the house, violently pumped him, shaved him and disgracefully used him." Here too stood the old Blue Boar Inn at which Cromwell and Ireton, disguised as robbers, awaited the soldier who carried sewn into his saddle a letter from Charles the First to his Queen. While the soldier was detained within, they cut open the saddle, extracted the letter containing certain proof of Charles' incurable and incessant treachery, and sent the messenger on his way unwitting of his loss. And then, crossing Holborn, one comes to Gray's Inn to tread the pavement where the weary feet of Francis Bacon paced so many a round after his fall from place and power, and where, within sight of his statue in the outer court, one may still be shown the sacramental cup from which his sad lips drank.

The impression of age and antiquity which such a journey leaves is not lost even when one enters the Royal Courts of Justice, for though built only in 1886 the design of the architect and the smoke of London have combined to make the buildings seem years older than they are, and in the hurrying figures of gowned and bewigged barristers and the red-robed judges on the Bench, one recognizes forms familiar for centuries in legal portraiture. No degree of intimacy with the traditions which cluster round these halls or with the costume of the dwellers there can drive from the mind of the American visitor the contrast with his less ancient temples and the highly informal garb of their priests and acolytes. Only when he has tarried to witness the courts in action does this sense of the unusual wear away; for then he finds the rules of law invoked are those upon which he was nurtured, the examination of witnesses is conducted in the manner and by methods he has himself employed, and judgment is rendered in language drawn from the very precedents he has been taught to revere. As he watches the triumphant victor or disgruntled vanquished leave the arena he feels, to paraphrase John Bunyan, that "but for the grace of God" and the lack of a wig and gown there might he go himself.

"The best prospect," said Disraeli, "that the law holds out to a man is port and bad stories until he is fifty and then a peerage." Two of these rewards are obviously beyond the present reach of the American lawyer, no matter on which side of fifty he may find himself. It must be admitted that there are other differences between the lawyers of England and ourselves hardly less definitive. Of these the most pronounced perhaps are those which spring from the methodical, and from the American point of view, the somewhat rigid organization of the legal profession itself. In large part this organization is the result of slow-moving historical causes, but it springs also from that innate love of established order and custom which

*Address delivered at the Forty-Fourth Annual Meeting of the American Bar Association, at Cincinnati, Ohio, August 31, 1921.

is one of the strongest instincts of the English race. The rank and precedence which obtain are not based upon any innate sense of superiority or inferiority among men—indeed the underlying philosophy of the English state is profoundly egalitarian in point of human rights—but there is a desire to know and a willingness to recognize the exact limit of the sphere to which one has been assigned by choice or fate that is not felt in a newer society. The table of legal precedence accordingly is quite definite. It has at its apex the Lord Chancellor as the highest legal dignitary of the Kingdom and descends by successive gradation as follows:

The Lords of Appeal (six in number);
The Lord Chief Justice of England;
The Master of the Rolls;
The Lords Justices of the Court of Appeal (five in number) (according to seniority of appointment); and
The President of the Probate, Divorce and Admiralty Division;
Judges of the High Court (twenty-three in number) (according to seniority of appointment);
The Judge of the Arches Court;
The Attorney-General;
The Solicitor-General;
The Judges of the County Courts (fifty-four in number);
King's Counsel, and such as have patents of precedence;
The Recorder of London;
The Common Serjeant of London;
Doctors of Civil Law;
Doctor of Laws;
Barristers-at-law;
Proctors;
Solicitors.

Among barristers there is not only the relative rank and right of preaudience that prevails between the utter barrister in his stuff gown and the King's Counsel in his glistening silk, but a precedence based upon the date of one's call to the bar. If by chance two have been called upon the same day, he whose name has been longest on the book of his Inn is the senior; and those who during their novitiate have obtained studentships or certificates of honor are rewarded by seniority over their fellows of equal date. These questions of precedence and seniority are by no means devoid of consequence in after life, for in general no barrister can accept a brief as junior to a barrister junior to himself in point of call, and upon ex parte motions seniority carries with it the right of preaudience. To him who has taken silk, the matter is of even graver moment. A King's Counsel cannot hold a brief for the plaintiff on the hearing of a civil cause in the High Court, Court of Appeal or House of Lords without a junior associate, by whom alone must be performed the duty of "opening the pleadings"; and, while the rule seems less explicit where the appearance is for the defendant, the usual custom is the same. The effect, of course, is to reduce the cases in which a K. C. is available, for not every controversy warrants the strain of this double employment.

The degree of dignity of solicitors is evidenced by the rather bitter statement made some years since by one of their number, that "a barrister is to a solicitor what a peer is to a law-stationer." But among themselves a more complete equality obtains; or perhaps it would be fairer to say that their struggle for existence is neither helped nor hampered by questions of relative rank.

Mere questions of precedence aside, however, the whole scheme of legal life in Great Britain is built upon the hard and fast division between the barrister on the one hand and the solicitor on the other. It is a distinction which tradition, custom and positive law combine to maintain inviolate and inviolable; and to say that it is analogous to the difference with which we are familiar between the "court lawyer" and the "office lawyer," tells but half the story, for the gulf is much wider than that. Pollock & Maitland assert that, historically considered,

> these two branches have different roots; the attorney represents his client and appears in his client's place, while the counter speaks in behalf of a litigant who is present in court either in person or by attorney.

This was certainly true as far back as 1286 for recognized counters or advocates were already performing their function when the Statute of Merton granted to every free man the right to be represented at the county, tything, hundred, wapentake and minor courts, by an attorney, whose right, however, to address the court seems to have been doubtful. Under Edward the First, the English Justinian, a definite class of English lawyers makes its appearance, and toward the close of the thirteenth century we find statutory evidence of their respective functions in an ordinance passed by no lesser potentates than the Mayor and Aldermen of London, forbidding any counter to practice also as an attorney.

The separation thus begun between the two orders continues without abatement and shows itself not only in function but in education, in dress, in legal status, in relationship to clients, in compensation, and not least of all, in eligibility for public office. Thus a barrister educated at one of the Inns of Court and admitted by its benchers to the Bar enjoys in his wig and gown a singular immunity from legal restraint. He is not an officer of the court, which neither admits him to practice nor has power to disbar him from his profession; for if the Judge, in course of trial or otherwise, becomes acquainted with acts done by a barrister so serious in character as to render him unfit to practice, he merely reports the matter to the offender's Inn for inquiry and action. No oath of service is demanded upon his call, nor even one of allegiance, for an alien may enjoy full professional status at the English bar. No tax is levied upon his right to practice and no statute undertakes to regulate the compensation which he shall receive. His freedom has its limits, of course, for he has since 1850 no direct access to his clients and cannot of his own motion and with out the previous instruction of a solicitor, commence, carry on or defend any action except when retained in open court by a criminal in the dock. Neither can he sue for his fees; but this disability has its countervailing blessing in the fact that he cannot be sued in turn for any negligence in the performance of his duties. He must accept all briefs tendered to him in any of the courts in which he professes to practice when accompanied by the offer of a proper fee, yet can associate no partner with himself to divide his labors and responsibility. The functions which he is permitted to perform fall into three classes, *i. e.*—advising upon questions of law; drafting pleadings, conveyances and other documents; and acting as an advocate in the courts. So long as he is of the junior Bar he may in addition receive pupils in his Chambers; but once made King's Counsel, this and

the labors of drafting are alike beneath his professional dignity. To him and to him alone, however, are open all the judicial offices of the Kingdom as well as the great political posts of Lord Chancellor, Attorney General and Solicitor General.

How different the lot of the solicitor! The law, it is true, gives him a quasi monopoly of litigation by ordaining that no one but a properly enrolled solicitor or a litigant in his own person can "sue out any writ or process, or commence, carry on, solicit or defend any action, suit, or any other proceeding in any court in England, or act as a solicitor in any cause, matter or suit, civil or criminal." But it accompanies this grant with a degree of statutory regulation and legal supervision to which perhaps no other profession is anywhere subject. From professional birth to legal death, the solicitor moves in the shadow of the law he serves. As an officer of the court, he must preface his admission by an oath of faithful service, and can preserve his status from year to year only by taking out an annual certificate on which a tax is paid. The signature of the Master of the Rolls is necessary for his admission and the Law Society which has the rolls in its keeping may oust him from his calling for any act of professional misconduct or personal immorality. His fees are rigidly prescribed by none too generous statute [such "Jacobean" fees as 6s 8d for an interview and 3s 6d for a letter], and unless he has sheltered himself behind the advice of some presumptively omniscient barrister, damages may be recovered from him for any negligence. He must be a British subject; and while, as the present Prime Minister has brilliantly demonstrated, he may attain many offices, including the highest in the state, yet among legal posts only the most petty are open to him, and his voice may be heard only in Chancery Chambers, the Bankrutpcy Court of First Instance, County Courts and minor tribunals.

The choice between the one life and the other is one that cannot be made at convenience. It must be reached at setting out, for there is no part of the road which the neophytes of the two professions travel together, and wholly different agencies take their lives in charge. For the intending barrister the initial step is enrollment at one of the Inns of Court. If the student contemplates practice at the Chancery Bar, he will no doubt follow custom and attach himself to Lincoln's Inn, which traces its traditional preference for Chancery to the days when the courts of the Vice-Chancellor were located on the ground it now occupies. The Inner and the Middle Temple are more especially the Inns of the common law barrister. Of these the Middle is by tradition the most catholic and democratic of all the Inns, while the Inner, larger at present in point of numbers, is recruited largely from the universities of Oxford and Cambridge, and is accordingly suspected of aristocratic leanings. Gray's Inn, the smallest of the four, makes no choice between the chancery and the common law bars. It possesses, however, a mellowness and charm of its own, and claims as its patron saints Queen Elizabeth, Lord Bacon and Lord Chief Justice Coke. When an incendiary bomb from a German airplane pierced its roof, it narrowly escaped the Crown of Martyrdom.

In government and custom there is little room for choice. All four of the Inns are voluntary incorporated societies wholly independent of the State and of each other, although they have chosen to act together in providing for the education and examination of students, and in defining the conditions for a call to the Bar. Their membership is composed of students, utter barristers and benches. The Masters of the Bench are the governing body of the Inn, filling their ranks from time to time by cooptation from the barristers of more than ten years' standing. It is they who decide what persons shall be admitted as students and what students shall be called to the Bar. When the barrister has donned his gown, it is they who supervise his professional conduct and who may for sufficient cause inflict upon him the ultimate penalty of dismissal from the profession. So long as he remains at the Bar, the barrister is subject to their supervision, and to retire from the membership of his Inn, unless indeed he becomes a member of another, is to forfeit all right to continue in practice. The Committee on Membership of the American Bar Association may well heave a sigh of envy at thought of such a system.

To discuss in detail the preparation necessary for admission to the Bar would be beyond the scope of this address. It is enough to say that the student must address himself to a double duty; first, keeping terms, and second, passing examinations. The so-called dining terms of the Inns are four in each year lasting three weeks each. Twelve terms or three full years, in the absence of some special dispensation, must be kept by dining in hall. Three days in each term is sufficient for those who are students in some university, six days for those less fortunate; and in order no doubt that the student may improve in morals as well as in mind, no attendance is counted in his favor unless he be present at grace both before and after meat. The examinations which precede his call are prescribed on behalf of the four Inns by the Council on Legal Education upon which all the Inns are represented. A course of preparatory lectures is arranged by the Council, which the student is at liberty to attend or ignore; but whatever method of instruction he may choose, he must absorb sufficient information to pass the required examinations and must digest the quantity of food to which his dining terms constrain him.

The segregation of his intended calling is made clear to him by the exaction of a pledge upon his entrance (as well as upon his call) that he does not and will not directly or indirectly act in the capacity of

> solicitor, attorney at law, writer to the Signet, writer of the Scotch courts, proctor, notary public, clerk in chancery, parliamentary agent, agent in any court, original or appellate, clerk to any justice of the peace, registrar or high bailiff of any court, officially professed assistant or deputy receiver and liquidator in any bankruptcy or winding up act, chartered, incorporated or professional accountant, land agent, surveyor, patent agent, consulting engineer, clerk to any judge, barrister, conveyancer, special pleader or equity draftsman, clerk of the peace, or clerk to any officer in any court of justice.

and moreover that he is neither engaged in trade nor an undischarged bankrupt. Only when he has purged himself of all such lesser ambitions is he ready for the society of the Bar.

Except for the necessity of examination there is little that is similar in the making of a solicitor. Straight for him is the gait and narrow is the way, although many there be that go in thereat. The steps are four in number; first he must serve as a clerk for five years under a practicing solicitor; second, he must pass the required examinations, conceded to be even more exacting than those demanded from the barrister; third, he must be duly admitted and enrolled; and last, he must take out a proper certificate to prac-

tice. By the articles of clerkship he binds himself to the service of a practicing solicitor, paying him an agreed premium for his tutelage. In a typical contract I recall the amount to have been 250 pounds, with the addition of a stamp duty of eighty pounds to be affixed under penalty. These articles when executed must be enrolled and registered at the offices of the Law Society. How rigidly they bind the novitiate appears from the fact that before he enters upon any duty or engages in any employment whatever other than that stipulated in the articles, whether in or out of office hours, he must obtain his principal's consent and the sanction of the judge. Even though the employment in no way interferes with his service under the articles, there is no relaxation of the rules, and the penalty for infraction is the loss of credit for so much of his five years' terms as had elapsed before the offense. Thus where it appeared that an articled clerk had acted without permission as clerk to a Parish Vestry, which seems of itself rather an innocuous calling, it was ruled that he had contravened the Solicitors Act, and his service was vitiated accordingly.

The examinations are three in number, preliminary, intermediate and final. The preliminary examination which is a condition precedent to service under articles is intended to demonstrate the possession by the clerk of sufficient general education to qualify him for the study of law. It includes among other subjects English, arithmetic, algebra and elementary geometry, the geography of Europe and the history of England, Latin and any two languages out of the following six, namely: Latin Translation, Greek, French, German, Spanish, Italian. The intermediate examination can be taken by the candidate at any time after the expiration of twelve months' service under his articles, and consists of two parts—elementary law in which the selected work has been for years Stephen's Commentaries on the laws of England; and second, trust accounts and bookkeeping. The final examination comes on the eve of the expiration of the articles of service. The subjects are (1) principles of the law of real and personal property and the practice of conveyancing; (2) the principles of law and procedure in forms usually determined or demonstrated in the Chancery Division of the High Court of Justice; (3) the principles of law and procedure in matters usually determined or demonstrated in the King's Bench Division of the High Court of Justice and in the law and practice of bankruptcy; (4) the law and practice of probate, divorce and admiralty, ecclesiastic and criminal law, and practice and proceedings before the Justices of the Peace. Let us search our consciences and ask whether as practicing members of the American Bar we would be safe under analogous fire.

Unlike the barrister, the solicitor is not compelled to maintain a membership in the Law Society, which plays so large a part in his professional life. The law list for the year 1920 contains the names of some 16,000 enrolled solicitors in England and Wales; only 9,000 of these are members of the Society, but all of them alike are subject to its disciplinary power. Formerly the jurisdiction to strike solicitors from the roll for professional or personal misdemeanor, was vested in the High Court of Justice, acting upon recommendation of the Society. By recent statute, however, the Society itself is given original jurisdiction to strike off an offending solicitor, whose only remedy thereafter is an appeal to the High Court of Justice; and since the Society acts in such matters only after a formal hearing, it is fair to assume that few appeals will be successful.

Thus the barrister and solicitor having entered their callings by different doors, pursue their separate lives to the end. They are not even welcome guests in each other's houses. No barrister can invite a solicitor to sit at table with him in the Inns of Court; and while the barrister may visit the sumptuous and comfortable quarters of the Law Society in Chancery Lane, where solicitors congregate, his frequent coming would lay him open to the suspicion that he was in search of business. One of the reproaches lodged against the notorious Jeffreys is that he came into full practice by getting acquaintance with the attorneys in the city and "drinking desperately with them." Apparently it is not his habits, but his associations which history condemns.

The barristers and solicitors, however, do not entirely exhaust the list of those entitled to be spoken of as legal practitioners. At least two other classes seem to be so recognized. Students who are qualified for call to the bar may, with permission from the benches of their Inns, practice "under the bar" as conveyancers, special pleaders or equity draftsmen; their leave to do so is granted for one year, but may be renewed annually. There are also the notaries public, deriving their authority from the Court of Faculties of the Archbishop of Canterbury, who share with barristers, solicitors, conveyancers, special pleaders and equity draftsmen the sole right under the statute "for or in expectation of any fee or reward to draw or prepare any instrument relating to real or personal estate or any proceeding in law or equity."

With all its antiquity the system of a dual profession does not entirely escape challenge. The possible "fusion" of the two branches is a subject of discussion almost as perennial as that of legal education or uniform state laws in a certain other country. There are recurrent suggestions that the barriers be lowered or removed either by giving to all lawyers the right of audience in all the courts, or by allowing barristers and solicitors to enter into commercial partnerships with one another or by going the whole way and permitting all lawyers to exercise both functions simultaneously. The reasons pro and con are too familiar to bear repetition; and since they are in the main matters of sheer opinion, it is not surprising that they leave many unconvinced. I gather, however, that while many solicitors would welcome such a change, a clear majority would not; and that those among the barristers who favor it constitute an even smaller minority. One well informed and thoughtful lawyer expressed to me the opinion that the present system would last "as long as the Crown," and the Crown in England is not regarded as a transitory institution.

After this recital of the ranks and orders into which the legal profession in England is divided, it may seem paradoxical to say that another point of contrast with the profession in America is the greater solidarity that prevails in England. In comparison with the close knit organizations sheltered by the Inns of Court and to a lesser degree by the Law Society, we in America seem but scattered grains of sand. It is difficult to make one familiar only with English atmosphere understand that in truth, notwithstanding this Association, there is no such body as the American Bar; that instead scattered groups constitute the Bars of cities, counties or states, with a Federal Bar

here and there composed in part of the same members, but all united by no tie of common origin or discipline.

In England, I must think there is, especially among barristers, a sense of sodality and community of interest to which we do not attain. The companionship of the Inns permeates their entire professional life, and in the days gone by there was added to this the fraternity of the old Circuit messes that made their semi-annual rounds of the assize towns. These pilgrimages Dean Swift has satirized in his jingling verses:

> Now the active young attorneys
> Briskly travel on their journeys,
> Looking big as any giants
> On the horses of their clients

and so on and so on for a hundred lines or more. Those who dwell with affectionate memory upon the golden age of the Circuit Bars, lament the fact that the leaders of today no longer go regularly upon circuit and can be enticed from the comforts and emoluments of London only by promise of a bumper fee.

Perhaps it is rapid transit, perhaps other causes less obvious, but the fact remains that the concentration in London, both of the lawyers and of the legal business of the Kingdom, is a phenomenon quite without parallel on this side of the sea. In the Law List of a year ago there appeared the names of ten thousand barristers, more or less, a majority of whom, however, are not in active practice. Of these but 363 are entered as of the Provincial Bar, and in 1920 among the 307 King's Counsel but one was registered outside the Capital. One-third in round numbers of the enrolled solicitors are credited to London, and one must remember that among the remaining two-thirds who are entered as country solicitors are included those who serve the great cities of Sheffield, Birmingham, Manchester, Leeds and Liverpool. Which is cause and which effect it might be hard to say, but it is evident either that litigation has drawn the lawyers or, what is less likely, the lawyers have drawn the litigation to a central focus. Setting to one side the petty cases tried in local courts of limited jurisdiction, an overwhelming majority of all the law suits of the Kingdom are tried and decided in the Law Courts on the Strand. For instance, in the last year for which figures are at hand, 2,117 cases were set down for trial in the King's Bench Division of the High Court of Justice; only 609 of these were entered on Circuit, and of this number 384 are credited to the four cities of Manchester, Birmingham, Liverpool and Leeds. Twelve of the assize towns had no case for trial; eight had but one; thirty-four others an average of but six each. One commentator had suggested that provincial solicitors labor under the impression that London juries give larger damages than can be obtained in the Provinces, and for this reason rush to enter their cases on the Middlesex County list. In support of this, an instance is cited of a client who, when deprived of costs by Sir Henry Hawkins because his case should have been brought in Dorsetshire, consoled himself by the reflection that he had recovered £500, where a country jury would have given him but £50.

Having embarked upon statistics, let me digress to add a word on the subject of the relative amount of litigation in England and America. One must remember, in comparing figures, that the population of England and Wales is roughly one-third that of the United States, and that this disproportion will naturally reflect itself in the statistical returns. But the difference in population is quite insufficient to account for the disparity which in fact exists. Startling as it may seem, the major litigation of England and Wales is relatively little more than the litigation in our Federal Courts alone; and the vast tide of controversy that flows through our State Tribunals may be credited to us as surplus belligerency. I have no complete statistics with which to prove this assertion, nor would I tire your patience with them if they were at hand, but a few comparisons will be suggestive. During the five years from 1914 to 1918, inclusive, the average number of new cases docketed with the Supreme Court of the United States per term was 576.6; in the House of Lords for the same period it was 81 for the United Kingdom and 51.8 for England and Wales. In the year 1918 there were docketed in the Circuit Court of Appeals of the United States 1320 new cases. For the same period in the English Court of Appeals but 488, which was, however, 83 cases less than the five year average. In the same year the District Courts of the United States docketed 72,237 cases, including 20,385 bankruptcy proceedings; while in the High Court of Justice, including its Chancery, King's Bench, Probate and Admiralty Division, 36,171 proceedings were commenced and 1276 bankruptcy petitions were filed. It is true that in this same year the County Courts present an imposing total of 309,096 plaints entered; but 308,650 of these were for sums not exceeding £20 and but 209 for sums over £100.

Figures are often misleading and generalizations from incomplete statistics are always dangerous; allowance, too, must be made in recent years for the unusual conditions of the war; and yet I believe it may be truly said that the average Englishman, with all of his proverbial insistence upon his personal rights, calls less often upon his courts for relief than does his American cousin. Who shall come forward with an explanation of this fact, if fact it be? Is it a survival of days gone by when justice was not only more costly but more tardy and uncertain; is it because there exists in England a class of lawyers whose business lies wholly outside the Courts and by whose hands many controversies are settled without judicial aid; is there a deterrent in the fact that the unsuccessful litigant must pay the fees of his adversary's counsel and solicitors—in other words, that costs mean costs and not merely the statutory fees of court officers, jurors and witnesses; or is there a reason deeper still in the age-long habit of this island people to respect the law they have made and live their daily lives within its well-marked circle?

Now, in addition to its organization and its unity, I venture, all novelists and story-writers to the contrary notwithstanding, to ascribe to the legal profession in England, as another attribute, a marked spirit of progress. To justify this statement by a review of the sweeping changes which have taken place within the last century, notably in the Judicature Acts of 1873, 1874 and 1875, would be easy; but much has happened since the century turned to show that the English lawyer has not lagged behind the times in his liberalizing tendencies. In his own house he has set up the General Council of the Bar to rule on matters of professional etiquette; and has installed a new and comprehensive system for the education of articled clerks as solicitors, both in the Provinces and in London. The disciplinary powers of the Law Society have been reaffirmed and enlarged. Representation has been accorded to the practicing members of the profession on the committee charged with making rules and orders in all branches of the High Court, which is now composed of eight judges of the High

Court, two members of the General Council of the Bar, one member of the Council of the Law Society and one other solicitor, presumably a provincial. Justice has been brought nearer to the masses by the enlargement of the common law jurisdiction of the County Courts, and a movement is on foot to distribute the trial of cases, especially in matters of divorce, more generally throughout the Kingdom.

Especially in the domain of criminal law and procedure has the spirit of improvement made itself felt. One would hardly expect the learned compiler of Smith's Leading Cases to stand forth as a poet, and yet seventy years ago he described the once wretched lot of the accused in the following lines:

No tribe, with rusty camlet gowns
And shabby horsehair wigs,
Harangued the upper gallery
In favour of the prigs.

No troops of venal witnesses,
Inured to perjury,
Were ever brought by knaves who sought
To prove an *alibi*.

For sundry wise precautions
The sages of the law
Discreetly framed whereby they aimed
To keep the rogues in awe.

For lest some sturdy criminal
False witnesses should bring—
His witnesses were not allowed
To swear to anything.

And lest his wily advocate
The Court should overreach,
His advocate was not allowed
The privilege of speech.

Yet such was the humanity
And wisdom of the law,
That if in the indictment
There appeared to be a flaw,

The Court assigned him councilors
To argue on the doubt,
Provided he himself had first
Contrived to point it out.

Yet lest their mildness should, perchance
Be craftily abused,
To show him the indictment they
Most sturdily refused.

But still, that he might understand
The nature of the charge,
The same was in the Latin tongue
Read out to him at large.

The poet was writing of ancient history, yet until the year 1898, the prisoner's mouth was closed, except in certain cases, in an English Court—"in mercy to him" as it was said, lest he should convict himself. In 1907 the Court of Criminal Appeal was erected with jurisdiction to review either convictions or sentence on matters of fact, or mixed law and fact, or upon any other ground; to quash the conviction or modify the sentence either by reduction or enlargement of its terms; but, singularly as it seems to us, without power to grant a new trial. Latest of the innovations in this field is the Indictments Act of 1915 under which the language of all indictments has been reduced to the smallest compass. Years ago when the jail fever raged in Newgate prison, the judges of the criminal court buried their noses in fancied protection in bunches of aromatic herbs. To this day when the summer term at the Central Criminal Court, the Old Bailey, is opened, the Lord Mayor in his robes and chain, atttended by his sheriffs and the bearers of his sword and mace, the attending Alderman and the judge enter the court room bearing each his nosegay, and the judicial dais is strewn with the aromatic herbs of former days. In such surroundings one confidently waits to hear all the rolling phrases of a common law indictment, and feels it a distinct anachronism to listen to a charge containing nothing more than this:

The King *vs.* Albert John Brown.

Albert John Brown is charged with the following offense:

Statement of offense: murder.

Particulars of offense: Albert John Brown on the 19th day of October, 1920, in the County of Essex, murdered Caroline Smith.

Latest, although not least, of the portents of change are those due to the Act for the Removal of Sex Disqualification, passed in 1919, which has ushered in, not without much wagging of heads, the woman barrister, the woman solicitor and the woman jury member. When mixed juries made their first appearance there was much discussion among judges and lawyers of the proper method of address, since the time honored "Gentlemen of the Jury" was manifestly obsolete. The difficulty was finally resolved by the adoption of the somewhat obvious phrase "Members of the Jury."

And yet even in courts so modern and so new as the Court of Criminal Appeal, antiquity still rears its hoary head and will not be denied. I recall one case, in which our distinguished guest was a participant, where the Court was called upon to determine the jurisdiction over a charge of perjury of the Justices of the Peace for the Liberty of Peterborough, which involved a discussion of English history and of royal charters running back to ecclesiastical grants from Edgar the Saxon and Wolfranc the Elder—whoever he may have been. What an example such a case affords of that blending of the old and new which is at once the charm and strength of England and of English law! Is not the crown of the political genius of the Anglo Saxon, his ability to make great changes, both in law and government, without resort to violence? His movement may be slow, at times so deliberate as to be imperceptible, but none the less he moves. The radical of today is the conservative of tomorrow; the rearguard camps at night by the smoking watch fires from which the vanguard departed in the morning; but without breaking ranks or losing touch the whole column moves steadily onward to a broadening future.

In opening my remarks I promised not to burden you by any reference to the problems of the hour. May I be released from that engagement for a closing word? When all comparisons have been made, and all differences recounted, the fact remains that the members of the legal profession in England are in very truth our brethren overseas. The common law by which we live has its roots in English soil. The judges who interpret it on both sides of the water look to their distant colleagues for counsel and assistance, and the principles of liberty which it embodies are the rod and staff by which our peoples walk. Trained in the same school, professing the same great ideals, sharers of like obligations, immunities and privileges, there rests upon the legal profession in England and America a duty which is joint and not several, common and not divisible. The nations whom they serve stand today supreme in present strength and in potential energy. Upon them Destiny has laid accordingly the largest responsibility for the immediate future of the world. Shall not the lawyers, who lead as well as serve them, guide them in the ways of mutual confidence and joint endeavor in the service of mankind?

THE ADJUSTMENT OF PENALTIES

Discussion of Opposing Views as to the Criminal and the Significance of Punishment, and Appeal for Proper Penalties Actually Enforced as Best Means of Combating Crime*

By Marcus A. Kavanagh
Judge of the Superior Court, Cook County, Ill.

IMAGINE if you can, an army of 136,700 women and men marching under their divisional banners through the streets of this or any city, clothed in uniform, marshaled by officers, headed in line by 14,000 savage-hearted men and women who have taken the lives of their fellows. Next to these, first shall march 5,000 robbers and 18,000 burglars, each a potential murderer. Then in order, tramp 3,000 furtive-eyed thieves; after these 9,000 unclean wretches who have committed irreparable crimes against the wives and daughters of other men; and thronging behind them come at last the many thousands of other miscreants who have unjustly inflicted suffering and loss upon their fellow citizens. If your imagination thus serves, it has but grouped and visualized the last United States census reports upon the subject we are considering. Suppose also, that while the shrinking spectators stand watching, this ghastly army breaks ranks, scatters to cover, then no doubt your imagination will pause from other efforts to picture the panic and dismay of the beholder. Well, as a matter of fact, that army has broken ranks. The computation dates from 1910; the prisoners of that year have nearly all served their terms and one-third of them, after a career of danger and loss to the public, have served other terms in addition. Their ranks have been vastly recruited. The mighty army continues to increase its war against society, is more persistent, more baleful than ever before in the history of any country. Their cost in mere money to the nation is enormous. It is a pretty safe conjecture that today and all days of this year, 150,000 persons either convicted of, or charged with crime, wait behind steel bars. It is also true that the number increases beyond all reason in comparison with the ratio of increase in our population. These prisoners cost the taxpayers of the country $54,750,000 a year for their mere food and keeping. They cost thrice that amount to watch, pursue and convict before they came into prison. They have cost almost as much as the second sum in the waste and breakage of property they have wantonly occasioned. The misery, agony, terror and physical suffering that band has created among innocent people is incalculable. The situation presents a more forbidding phase still. Not only is the number of crimes and of criminals steadily increasing, but the number of recidivists is accumulating in even greater proportion. Nothing in the situation could portend worse than this fact. It demonstrates that our system has failed to reform, and that the law's penalties fail to deter—in other words, that our laws are not fulfilling their office—protecting the law-abiding. Judge Wadhams is reported as saying that one-third of the inmates of our prisons are repeaters. It must be remembered that the more skillful of our criminals are not caught. That only the duller minded, as a usual thing, are convicted. A study of the mentality of prisoners affords no real clew as to the average intelligence of the criminal.

During the past few years I have visited many prisons where I talked personally with wardens, guards, chaplains and convicted. In preparation for the honor you do me today, I addressed a questionnaire to 65 heads of the 65 great prisons of the country and I am of the opinion that the statement of Judge Wadhams is within the fact rather than over it. There are few penal institutions in which it is possible to get the correct records of prisoners. So many scattered small prisons keep no record at all. Recently the statistical clearing house at Fort Leavenworth has recognized the urgent need for this important information, but to this hour there is no way to ascertain the real facts. For example, from one great prison of the country the official report shows one-third of the inmates to be repeaters, but the chaplain of the prison confided to me his private memoranda which disclosed that more than one-half had been convicted before. The police in Chicago say, and I make no doubt those in other great cities claim as well, that from 85 to 90 per cent of the more serious predatory crimes are committed by men who had before suffered sentences short or long, mostly short, in some prison.

21,142 persons last year were brought before the identification bureau in Chicago charged with all sorts of serious or petty offenses. Of these 10,246 were identified as having formerly been under sentence. It is claimed by the officers in Chicago that, because of no sufficient system of co-operation throughout the country, many repeaters escape identification. In Auburn State Prison where a capable, scientific consideration is given to the matter of identification, out of a total population of 1,292, it is found that 651 are first timers and 541 are second timers.

In the United States penitentiary at Atlanta, out of 1,898 prisoners, 733 have been convicted before. Of these last, 186 had two previous convictions, 70 three previous convictions, 44 four previous convictions, 19 five previous convictions, 10 six previous convictions, 12 seven previous convictions, 5 nine previous convictions, 2 ten previous convictions, 1 twelve previous convictions, 1 thirteen previous convictions and 2 sixteen previous convictions.

I think it only fair to say that from a study of the answers to my questions, these two prisons nearly mirror the actual conditions in most American penal institutions. In some southern penitentiaries where the lot of the convict is not exactly one of pampered ease, the number of repeaters runs as low as eight per cent.

It must be kept in mind that the criminal with whom society must most seriously reckon is not the mere violator of an ordinance or of some minor law, but the predatory outlaw. So far as I can find no classification has been made by any criminologist of this sort of offender, and no special study seems to be

*Address delivered Sept. 2, 1921, at Annual meeting of American Bar Association at Cincinnati.

directed upon him. Nevertheless, while in a class by himself, he remains the keystone of the entire black arch; upon his known fate largely depends the public fear of the law. Disguise it how one will, respect for the law among countless thousands who have never committed crime and who never will commit crime, results from their fear of the law—fear of the physical suffering from punishment, more often fear of the disgrace of punishment. Not that the minor offender is to be treated lightly; enforce all the little laws and the big laws will pretty much enforce themselves.

Statistics are often matters of temperament. Usually the penologist can show you facts to prove what he wishes most to believe. However, two facts that can not be hidden nor mitigated, stand out in alarming distinctness: Predatory crimes are increasing beyond all reasonable proportions, and in greater proportion is increasing the number of men who have been convicted more than once. I shall not trouble you with the figures upon the measure of crime, but will refer those who desire substantiation to Mr. Fosdicks' recent book upon the American Police System. The comparisons therein set forth between the prevalence of crime in this country and in other lands of common racial origin, together with the general situation here, demonstrate that if we are not a lawless people, then there is something radically wrong in our method of dealing with public offenders. But I contend that we are not as a nation, a lawless people. I testify to that which most of you will corroborate: One will be cheated five times in the shops of London, Berlin or Paris, to once in the stores of New York, Chicago, Cincinnati or other American cities. There is no more honest people in the world than the great American people. It follows necessarily there is something, or several things radically wrong with the adjustments and administration of the criminal law. The great American civil disease, Lack of Respect for the law, cannot but arise from a want of fear of the law.

A lack of fear of the criminal law can not exist if the law be armed with properly adjusted penalties and these penalties are enforced. Severity of penalties will not take the place of fitly measured penalties, nor will any penalties deter much from crime unless they follow swiftly and certainly upon the offense. To execute a man no matter how atrocious his offense, three years after the act, as is to happen shortly in this city of Cincinnati, is to bring only sympathy to the offender and censorious contempt for the law that kills him. The public only vaguely recalls the outrage of his offense, whilst it distinctly realizes the present suffering of the offender. The situation demands radical treatment if ever situation did. What can we do? What remedies are being proposed?

I think the criminologists dealing with the matter can be, roughly speaking, divided into two great classes —the sentimental class and the practical class. I use the word "sentimental" in no disparaging sense, and the word "practical" with no purpose of approval, merely employing these two terms for lack of better descriptive phrases. M. Salielles indeed thus characterizes the purpose of his own school: "A purely humanitarian reaction prompted by a sense of popular and sentimental justice."

The first class regards the reform and good of the criminal as the first object of the criminal law, arguing that with the criminal reformed, society is quickest and best protected. The second maintains that the chief purpose of the criminal law is to protect society with only secondary consideration for the consequences to the offender. Starting from a narrow divergence, the pathways of the two sorts of criminologists rapidly and widely separate in their results. The sentimentalists exercise largest control in France, Italy and in the United States. The practicalists rule notably in Germany, in Great Britain and in Canada. By their fruits shall we know them. The fundamental concept of justice in the several nations differs little. The Ten Commandments were engraved on the heart of the first caveman and will govern his last descendant. The capital differences are found in the theories concerning the adjustment of penalties.

To the north of us lies a country which speaks our language, has common religions, common traditions and like political institutions. It is only divided from us by an imaginary line. The situation in Canada and in Ohio should not differ in degree. Ohio has not half the population of all British America, but Ohio has twice the number of convicts and four times the number of its reported crimes. The great divergence in our system of criminal law and the Canadian system may be discovered in the adjustment of the several penalties.

In preparing to deal with this situation, the sentimentalist who through this generation has been in almost complete control in the United States, proposes a further injection of sentiment. He still designs, above all, to concern himself with the mental and moral condition of the accused. The practicalist insists that the first concern shall be to conserve the rights of the law-abiding citizen. For example, a lad convicted of several robberies is sentenced in Chicago for a stay at St. Charles School instead of being sent to the Juvenile Prison. The prosecuting attorney warns the court that the lad will jump the school fence within two weeks. The kind judge, sentimentalizing over the power of kindness to the young offender, disagrees. The prosecutor was wrong. The lad waited two months before he jumped the fence. Then enlisting another boy, and armed with pistols, they committed ten highway robberies in four days. On the fifth night this lad was killed in a duel by a policeman. The policeman died two days later. The Chief of Police standing above the bed of the wounded officer said, "You are going to get well, Tom." A great light shone in the face of the injured man. "Gee, Chief," he answered, "that's good. I just got to get well for the kiddies." But the kiddies didn't save him. He stopped breathing within the hour.

The sentimentalist in this case concerns himself most over the sad fate of the dead crook; the practicalist thinks of more importance the fate of the widow and the kiddies. I myself believe that the life of that one officer was of greater value to society than a penitentiary full of robbers.

Since July 1st two years ago, 18 police officers have been killed in Chicago by gunmen. They left surviving them 15 widows and 47 orphans, and God knows how much consequent grief and misery.

The ardent entomologist who discovers a rare bug under his microscope becomes absorbed to the neglect of his own family in the social activities and the spiritual aspirations of that irresponsive bug. All else becomes relatively unimportant. So the social entomologist studies the criminal. Spurred by that first of American characteristics, Sympathy for the Under Dog, he forgets that it not infrequently happens that it was the under dog who started the fight, and so brought

on his own trouble. The sentimental entomologist is surprised, first of all, to discover that the prisoner is a human being, having eyes, limbs and organs similar to his own. That this constrained person loves his mother devotedly, distantly reverences his father, affectionately tolerates his brothers and sisters notwithstanding they are constantly employed at honest work and rather resent him. In other words, he finds to his surprise that

> When the enterprising burglar isn't burgling,
> And the cut-throat isn't occupied in crime,
> He loves to hear the little brook a-gurgling,
> And listen to the merry village chime.

The inquirer is shocked to learn that his prisoner, like all the other inmates of the institution, never had a chance. This although his hard working brothers and sisters created their own chances, kept at school and have nothing to be ashamed of but this prisoner. Although the brightest-minded and most petted among them—and this is usually the case—he has no education, for to attain an education requires work, and he would not work.

Bruce Thompson, as quoted by Tardé, says that nine-tenths of the criminals have an intelligence above the average. That is my own experience. Also this prisoner was, he says, hounded by the police—in fact, all in the prison were so hounded. The policemen who fought a pistol battle with him at midnight in a lonely alley would tell a different story. But what is a policeman to the average American? Lastly, he wants another chance at freedom. It may be his sixteenth, but he wishes another. It is upon that other chance the two schools of criminologists often clash. After the second conviction society is foolish to take another chance. The dominant school in America insists upon considering only the evidences of the prisoner's reformation and the mitigating circumstances that surrounded his original crime. The other class, with which I in most respects sympathize and which at present has little voice in the United States, urges that before he shall be forgiven, the consequences to the public of his release should be weighed as of first importance. Meanwhile his keeper in the prison is pressed between two millstones of pity. He, too, by reason of his daily contact with the prisoner, loses sense of the interests of the public and comes to think only of the case of the prisoner himself. Then from the outside, a constant pressure of sympathy pushes in upon him until, as a consequence, most inmates in our penitentiaries are more generously cared for than they were when at large. Some students in boarding schools have not so much liberty; though soldiers in barracks are pretty much as well off. Listen to a couple of replies from wardens to my questions, which illustrate the general tendency of prison treatment. Please contrast in your minds the lives of offenders with those of the clerk, a laboring man or even middle class business men.

Our men have Saturday afternoon off all the year. In the winter we have moving pictures, the best we can find and plenty of them.

The men go into the chapel when the pictures are shown at 1:00 o'clock and the show lasts until 4:00 o'clock, a continuous run.

In the summer time we have baseball. Our team belongs to the Industrial League and at the present time we are leading the league. We have a fast team for our class and are proud of them.

Each year, if the opportunity presents itself, we have one or two of the big circuses which show in the city. The grounds where they stretch their canvas is along the side of our institution, and between the afternoon and evening performances the circus people bring their entire show in our parade grounds and our men see a better performance than the people outside, as the performers work very hard to give our men a good show.

We have other entertainments during the season—lectures, Grand Opera singers, minstrels, etc. A few Saturdays ago the Glee Club of the Chicago Chamber of Commerce was with us all Saturday afternoon, and gave the same performance they gave at the Auditorium in Chicago with Mary Garden as soloist. She was to be with them here but was called away on business, so she could not be with us. However, she promised to sing for us later in the season.

After the ball game on Saturday our men drill to the music of the band the regular army exercises and calisthenics.

Here is just one more.

Amusements and entertainments are provided by Motion Pictures every Saturday afternoon, with road shows and vaudeville performances on afternoons during week days, whenever available. For some time past we had weekly performances in our theatre building by vaudeville circuit. Recently we have been unable to secure satisfactory arrangements with the managers and these regular shows have been suspended, and indeed we secure what road shows we can.

The State College and High School pupils occasionally give performances to the inmates.

The "trusties" have a baseball team and play some outside team once a week, and practice with the second team every evening.

Sundays and Wednesdays a concert is given by the prison band, at present consisting of 40 pieces.

These letters do credit to the hearts of the men who wrote them. They describe pretty well the present general attitude of the prison keeper towards his charge, and it must be confessed that they are in direct line with the sentiment in this country which concerns itself in the matter. But to my mind, the condition they describe amounts to an unspoken but constant apology to the wrong doer for keeping him confined, a humane conspiracy against the penalties of the law, a tender readjustment of the penalties not contemplated by the law, which reacts in the more frequent commission of outrages against the innocent law-abiding citizen and ultimately the return of the prisoner to his cell. As for the food, well, it is a demonstrable fact that many of our own tables are not better supplied. I would like to cite you the daily bill of fare reported to the governor from one of our prisons, but time will not allow.

It is no excuse to say that some of these prisons are self-supporting. Prisons are not intended as commercial institutions. The public can well afford the expense, if the jail fulfills the only purpose and justification of its creation. The prisons of the State of New York underwent the first and highest of these inundations of sentimentalism. It may not be unprofitable to note the result. The number of prisoners received in Sing Sing prison for the fiscal year 1918-1919 was 1,073. Of these only 463 were first timers, while 610 had served other sentences. A little more than two years ago a more stringent discipline was inaugurated in Sing Sing. The subjoined table shows the falling off in the proportionate number of repeaters, but also discloses that Sing Sing still continues in popularity as a winter resort for old-time crooks.

	Fiscal Year 1918-1919	Fiscal Year 1919-1920	Fiscal Year 1920-21 (10 mo.)
Number rec'd in Sing Sing	1,073	1,490	1,297
First offenders	463	888	757
First time in S. S. but in other prisons	435	410	341
Second time in Sing Sing	152	171	163
Third time in Sing Sing	15	19	34
More than three times in Sing Sing	8	2	2
Repeaters	610	612	540

In Dannemora sixty per cent of the inmates are repeaters.

Against this record I reiterate that the first though neglected importance of the situation consists not in the great number of prisoners, not in the increase of recidivists, but in the widespread prevalence of outrages committed against law-abiding persons, which outrages these prisoners impersonate. The criminal is not as important as his crime. If we could abolish the crime, we could forgive the criminal.

I myself believe the first object of all criminal justice is to make the lives, the persons and the property of all law-abiding persons safe, and the first purpose is not to reform the wicked. If by reforming the evildoer this object can be accomplished, well and good, but I have little faith in being able to turn any prison for grown men or women into a reformatory. There is not a reformatory in the United States that is not misnamed, the hardened criminal in nearly all, mixing with the unhardened. The reformatory at Mansfield in this state, as well conducted as any in this country, today contains between forty and fifty per cent of repeaters mixing with young first timers. Surely some men are reformed by the process during punishment, but these are few. Whenever the wicked man is reformed by the law, usually we may be sure his change of heart occurred first when he faced some actual stern penalty of the law. Any warden will tell you with bated breath, how his roof covers a terrible hatchery for hidden unspeakable vices.

As Mr. McConnell writes, "prisons and houses of correction do not make for tender consciences. Taken in large, punishment chills and hardens." Prisons may and do tame criminals but it is the penalty of the prison and not its moral or social atmosphere which produces this result. A prison which loses its character as a place of punishment, which coddles and cajoles the inmates into believing that he is simply the victim of misfortune instead of his own evil mind, that apologizes to him for his confinement by the superexcellence of his food, by the constant supply of entertainment for his amusement, not only fails to reform the prisoner's heart, but belittles the law which keeps him there, cheapens respect for the law in the mind of the average citizen and kills the fear of the law in the souls of weak-natured men. In many of our penitentiaries the convict, continually told that he is undergoing suffering for something he could not help and for which society and not he is to blame, comes to regard himself at least as half a hero and all a martyr. God forbid that an American prison shall be a place of torture or of severe treatment, but neither should a prison change to a place of tenderness and entertainment where crime is extenuated and its methods perpetuated, but rather an institution where evil is atoned for and expiated by the evil doer. As Gray says, "cure of the individual if cure is possible, but in any event, defense of society against his noxious freedom." The advertised lives of society's criminals should not be made easier and sweeter than the lives of society workers. The law is the great insistent teacher. The law teaches while the pulpits are empty, when the schools are closed. In civilized countries the law constitutes a particular environment for every woman and man who realize its existence, an environment that fits him more closely than his garments and as constantly as his skin. Consciously or unconsciously, we refer all our problems to its standards, we accept its morals, we obey its commands as long as we respect its wisdom or fear its penalties.

The sentimentalists in this country, in France and in Italy create a misty atmosphere of irresponsibility for the criminal. They maintain that, strictly speaking, society has no right to punish for crime. They concede its right to restrain the evil doer but only for the purpose of, and up to the moment of changing his character. Without regard to the effect upon public thought or upon others tempted to commit crime, the offender is entitled as to right, to his release the moment he seems to be reformed. The rights of the public in the matter are subordinate to the rights of the individual. We have no right to punish, they say, because no man is in his soul responsible for his own wrong doing. He is simply the creature of heredity, education and environment. They fill many libraries with descriptions of the sufferings of the prisoners. Not one of them has yet thought it worth while to give a chapter describing the terror and anguish which wait with his terrified family on a threshold for the home-bringing of a murdered man. God, if there is a God, which most of them doubt or deny, is the great criminal because he is responsible for the birth and surroundings of the offender. The robber and thief are to be pitied, not blamed; reformed if possible, never punished for the sake of punishment. We have no more right to punish a criminal than we have to punish a poisonous plant. That is the sentimental theory stripped naked. But we *do* usually destroy a poisonous plant. The tiger is a creature of heredity, education and environment. But that is no reason why he should be permitted to prowl through the village or that we should break the bars of his cage. The animals so poorly equipped in the struggle for existence that they could not return bite for bite, if not protected with thick shells, disappeared soon and deep in the lower geological strata. The strength to strike has little influence if there accompany it no readiness to strike..

The office of the penalty goes far beyond its immediate victim. Some one has said that if statistics upon this matter were possible, the figures might easily show that our courts and prisons were ten times as useful as they are. For two years prior to March 1st, 1918, there had been a homicide in Chicago every day. During those two years not an assassin was executed. March 1st two worthless miscreants were hanged in the Cook County jail. There was not another murder in Chicago for four weeks and only two in the next six weeks. Many tears were shed and much commiseration expressed by sentimentalists for the snuffing out by the law of the existence of those two young men. But because of that act probably twenty or twenty-five law-abiding citizens walk the streets alive and well, who otherwise might now be in their graves. Justice to the guilty is mercy to the innocent.

Ineradicable in the public conscience lies the feeling that virtue should be rewarded and vice punished, a feeling that guilt which injures another should result in suffering to the guilty, and the deeper the guilt, the longer the suffering. Stephens says that it is highly desirable that a bad man shall be hated. Again, the law which contravenes that general conscience or neglects its satisfaction shocks the general mind and creates public contempt. In making our laws, we base them upon the assured knowledge that the underlying motives for nearly all conduct in this world rest not

upon altruistic aims but upon pain and pleasure. If the penal law were to be considered only as a deterrent to persons likely to be tempted, then the law would miss half its function. Its first office is public education. It is directed not only to the consideration of the immediate wrong doer, but also to the creation of the habitual thought of the great public. The detestation of crime depends upon the solemn infliction of its punishments. We do not execute murderers because they have done murder, but only that murder itself shall cease. I can find no better words to express my ideas than a quotation from *The Nation*:

> All meaningless hardships, all senseless severity, all physical or mental distress caused, not by well considered penal policies must be abolished. On the constructive side whatever can be done for the prisoner for making a man of him again, if he ever was one, and even trying to make a man of him if he never was one, is noble work, when it can be done without sacrificing the primary purpose of the criminal law. That primary purpose, it must never be forgotten, is not the reform of the criminal, but the prevention of crime. Of all agencies the most powerful is the association of the idea of crime with the idea of punishment and disgrace.
>
> The multitude whose moral nature is more or less defective, whose ability to resist temptation is small or whose sense of right and wrong is easily confused, how many of them are kept safe from crime or prevented from the first steps of crime by the long meditation of the prison and the gallows?
>
> It is not that the man who is in the track of crime makes an express calculation of the chances of punishment, though this, too, plays its part; it is that thousands never reach the point where crime is even considered as a probability, because of the life-long association of disgrace and misery which the role of crime asserts. It is this strongest of all defenses of society against crime and of the possible criminal and against his temptations that is put in danger when we permit loose talking and loose thinking and sentimental action to shove aside the stern realities of crime and punishment.

Lacassagne says that communities have the criminals they deserve. "Earn" is a better word than "deserve." Thrusting a wrongdoer into prison may do him no good at all, it may harden and make him worse, but if his imprisonment in the sum, works for the better protection of society, then a jail is the place for him.

Much nonsense is written about the mysterious vagaries of the prisoner's mind. There is nothing mysterious about him. I have looked him in the face through twenty-five years on the bench and fifteen years at the bar, and I tell you that he is just you or me plus—plus laziness, selfishness and cruelty. Any person with these three attributes is likely to commit crime at any safe moment. He may be difficult to handle but he is not insane and he is no mystery. The professional criminal shows no stigmata except an aversion to work. It is the desire to live at the expense of others which makes him a criminal. Teach him the value and joy of work, and he is no longer an outlaw. Since creation morning and everywhere a calloused hand presents in itself a certificate of good character. Heredity, aside from living parental example, has nothing to do with the matter.

Dr. Healy after testing 1,000 offenders, so concludes. It is not mere folly, but a crime to call any child a criminal. Any man may become a criminal and even grow to look like a criminal. If you believe we are far separated, imagine this wonderful collection of men, the American Bar Association, sitting together with cropped heads, dressed in prison uniform and adorned by four days' growth of beard on their faces. If the sight of ourselves in such predicament seem too impious, let our fancies so attire a convocation of Bishops in some church to which we ourselves do not belong, or to the House of Representatives at Washington, or to the British House of Lords or to—I almost said the United States Senate, but hardihood of irreverence may not travel so far. Yes, we are all pretty much alike, the worst of us and the best of us. Neither has mentality anything to do with the criminal disposition except that the duller minded will more poorly judge his chances. Some weak-minded men have evil dispositions but not because they are weak-minded. In direct proportion to their numbers, persons of weak intellects prove as honest in disposition, indeed are more easily deterred by penalties than are persons of stronger intellects. Crime is more a matter of disposition than of mentality. Neither is wrong-doing a matter of family environment so much as is imagined. Of course family example has often a great influence. Usually the criminal is from an honest father and mother and one of several brothers and sisters. He alone the cleverest in the family is the brightest, the most petted, indulged, pitied, and the most vicious. *All* environment, family and otherwise, plays a large part in the creation of crime, for this includes education, need and companionship. But it is most important to remember that no sane man ever yet committed a crime whether of passion or otherwise, who did not at the time, either consciously or sub-consciously, if he knew the penalty, take into account the penalty of the law. To deny this, is to affirm that a sane man does not realize the consequences of his act. Even the insane regard the penalty. An insane man with a brandished knife out on a County Poor-farm in Iowa, drove his keeper into a corner. "If you kill me," warned the keeper, "they will hang you." "No they won't," answered the lunatic, "because I'm insane." The penalty of the crime is then a close part of the environment about the man tempted. Through the penalty we can adjust the environment. The threat of punishment as a counteracting force comes to the wavering mind countless times of which there is no record. Other motives or sentiments may not be strong enough to restrain; fear reinforces them. This especially is true of weak or timid wills. What then, must be the general principles of adjustment? It is not necessary to change the penalties of the law in the different states, greatly as those penalties may differ, but to adjust them as they exist, to the crime, and make them effective. A properly adjusted penalty will have regard first to the harmfulness of the offense, and secondly, to the attractiveness of the offense. Cruelty in the law reacts against the power of the law. Weakness in the application of the law's penalties brings contempt upon the law.

Mr. Tighe Hopkins in his book, "Wards of the State," voices the theory of his school. He says the penalty should be adjusted to the criminal, not to the crime. He is wrong, absolutely wrong. The penalty should be adjusted to both. The criminal in the crime, for before the judge the criminal is the crime. Justice is mercy; justice to the guilty is mercy to the innocent. Yes, justice to the guilty is often mercy to the guilty. I contend that the ultimate cardinal principle which should underlie the adjustment of all penalties is not what will the prison do for the prisoner, but what will his imprisonment do for the state—not will it make him a better man or a happier man, but will it make him a safer man.

It is a tragic commentary upon the inefficiency of the sentimental theory that the two latest and mightiest

instruments for the uplift of the fallen, and the protection of the innocent—the laws concerning probation and parole—the best instruments designed by modern criminal science, should be turned by sentimentalists into forces which help to an appalling extent in the creation of recidivism, and in consequent dismay, loss and suffering among the homes of the law abiding. Those parole and probation laws, as originally intended, constituted mighty levers for the measure and adjustment of proper penalties. But like all powerful machinery, they inflict only crushing injury when misdirected. In nearly every state of this Union the application of these measures guided chiefly by sentimental considerations causes more injury to the public than good to the accused, and yet while the abuse of the parole law as at present administered in this country renders its continuance a menace, a repeal of that, or of the probation law, would mean a pathetic step backward.

I believe in parole for every man or woman with a good record who has committed any of the ordinary offenses, not predatory, and who is truly penitent, but never for the unrepentant. The defendant who although guilty, fights to the last ditch, needs his medicine. To release him at the end teaches him and all who know him only contempt for the penalty of the law.

If we can avoid doing so, the last place on earth to send a man or woman is to prison. No matter what we may plan, try or prate about his rehabilitation and reform, he comes out of prison to remain forever a pitiable thing. His life must drag along to its latest end, on a torturing, broken wing. A grown man can seldom be bettered by a prison sentence. Children restrained in properly adjusted reformatories may have a good chance. But the judge who will knowingly send a hardened criminal to live in such a reformatory among those children, ought to be made to live there himself. When we send a man to prison, the law forever after loses half its power over him. More than half the suffering of the condemned arises out of the disgrace from the imprisonment—a disgrace which, do what he may, will cling till the clay covers him. As for probation, it is most necessary to remember that you can never disgrace a man twice by imprisoning him. That punishment is forever out of mortal power to re-inflict. The recidivist has only the physical restraint to fear, and when that restraint is made so pleasant for him as to equal life on the outside, the law has nothing left for him to dread. But society can not afford to sacrifice itself out of mere pity for the pitiless, nor destroy itself with mercy for the merciless. It is not inapt that through all civilized ages the figure of justice carries not only scales but also a sword. Whatever pity the world has to spare, and more than it can spare, is needed for the discharged prisoner who is trying to go right. And the time of his imprisonment is needed to prepare him for the shock of the first breath of free air. The prison doors are the last that should close upon a man, but they ought never to open again until he has not only expiated his crime, but prepared himself for the load of his now terrible handicap. No man can properly be discharged from prison until he knows some useful trade—not a part of a trade but a whole trade —until his innermost nature has felt the thrill of creating some whole thing of value. And for this, then and there he should receive a pecuniary reward. Not that the money may help him financially, but that it may strengthen him psychologically.

It is therefore a conclusion which I respectfully submit to your consideration that the adjustment of the penalties of the criminal law as applied in this country should no longer continue to regard as of first importance the comfort and reform of the enemy of the law, but that judges, jailers, probation and parole officers and pardon boards, whenever for them a duty arises to adjust or readjust a penalty, shall in the light of the malignity and attractiveness of the crime so proportion the penalty as more surely to create a respect and fear of the law among the evil disposed together with a resulting love for its beneficience and gratitude for its protection among the law abiding; secondly, that so far as consistently with this principle it can be accomplished, they adjust the penalty for the good and reform of the prisoner.

THE ASSOCIATION'S "FAMILIAR SPIRIT"

Treasurer Frederick E. Wadhams' Long Years of Service Furnish Occasion for Notable Tribute of Official Associates During Cincinnati Meeting

ONE of the most unique affairs in connection with the meeting of the American Bar Association at Cincinnati was the banquet given in honor of Treasurer Frederick E. Wadhams by the present officers of the Association and former members of the Executive Committee. A handsome silver "loving cup" was presented in token of their appreciation of his twenty years of unselfish, untiring and effective work. The speakers were all ex-Presidents of the Association. The affair was entirely in the nature of a surprise to the recipient of the honor, who did not know until he was conducted to the room in the Hotel Sinton, in which the banquet was prepared, that such a tribute was even contemplated.

Acting President Carson was the first speaker. Addressing Mr. Wadhams, he said that the loving cup was presented in grateful appreciation of his many years of loyal service. By virtue of his relationship with the affairs of the Committee and Asssociation for so many years, the Treasurer was the only man who embodied the accumulated experience so essential to the success of an organization. Presidents might come and go. The Executive Committee's term soon expired. But for twenty years Mr. Wadhams had sat with them all and had discharged continuously the important duties of his position. His retention in that position had been due not only to his official capacity, but also to an instinctive recognition on the part of his associates that he possessed in an eminent degree what might be termed the "genius for friendship." He had been associated with him for twenty years, and no man of his acquaintance had grasped more firmly the fundamental fact of brotherhood which underlies the American Bar Association—the wisdom of the

bringing together of the men of the bar of different states.

Mr. Elihu Root spoke in a humorous as well as serious vein in his hearty tribute to the guest of honor.

Chief Justice Taft expressed his pleasure at being among those who testified their gratitude for the work done by Mr. Wadhams for the last twenty years. Another name connected itself with his at this time—the name of one with whom the Treasurer had been intimately associated. His work also came to mind as they presented this loving cup to Mr. Wadhams. Every Speaker of the House, every Attorney-General had to have somebody to help him. Mr. Wadhams had helped make most presidents of the Association such a success as they had been. He had been in a way their "conscience." Mr. Choate had referred to him as "the inevitable Wadhams"; that is, something that was perhaps a little in the way, something that certainly had to be considered, yet something that pricks us a little bit as conscience does. Mr. Wadhams was one of the moving forces of the New York and American Bar Associations. The debt due him was fitly evidenced by the expression which the love of his associates had taken tonight.

Mr. Frederick W. Lehman, of St. Louis, was glad to bear witness to the work which Mr. Wadhams had done for the Association. They came to the meetings and found the program outlined and everything prepared. Mr. Wadhams had paved the way. He knew of no man whose services were more entitled to the tribute being given. Mr. Wadhams had begun his service in the year in which the speaker began his attendance. He had fulfilled every expectation, overcoming difficulties, smoothing the way for others and carrying his work through successfully. Of him it might fitly be said, "Well done, thou good and faithful servant."

Senator Kellogg followed with a brief talk in which he said that to Mr. Wadhams was due much of the success of the American Bar Association. To him and to Mr. Whitelock was likewise due the credit of the idea of holding the first meeting of the Association on foreign soil.

Mr. Walter George Smith, of Philadelphia, said that it gave him unalloyed satisfaction to pay his tribute to the guest of the evening. All that had been said of him was true. His character could be compared to the pure white light of a diamond. Its many facets showed different colors as it was approached from different angles.

The Chief Justice had truly said that every man, however, eminent, had someone to help, someone to "devil" for him. He had but given expression to the belief of the greatest of ancient philosophers. Socrates, if his memory served him rightly, believed that he had a "familiar spirit" to whom he was indebted for many of his greatest thoughts. The guest of the evening was the familiar spirit of the American Bar Association. Its welfare was always on his mind. To him and to our lamented friend, George Whitelock, for so many years our Secretary, was owed a debt of gratitude never to be forgotten. How well they succeeded in molding the policies of the Association all associated with them could testify.

He attributed the Treasurer's strength to a certain tenacity of purpose which the gentleness of his manner ordinarily concealed.

Judge Meldrim spoke of how the Treasurer had endeared himself to all his associates. In some subtle way he had brought them into closer and finer touch. However rich and pure the cup they were presenting might be, it was not so rich and pure as their love for its recipient. However capacious it might be, it was not large enough to contain the measure of their affection.

Mr. Harry St. George Tucker spoke feelingly of his personal association with Mr. Wadhams.

Mr. Wadhams rose and in reply stated that it looked as if somebody had been trespassing on his field of work. This was the first time anything of the sort had been given without consulting him. When he came in his first impression was that someone must have gotten a very large fee to stand all this. He had no idea anything of this kind was contemplated. He had listened with a grateful heart and with some embarrassment to the beautiful tributes that had been paid him. He did not feel that his work was due any such recognition. If he had been told that anything of the sort was contempated, he might have thought of something worth saying. He could not say how much he had enjoyed the great affection that had grown up in the meetings of the Executive Committee and other meetings between him and others.

In addition to the Acting President and the six ex-Presidents who spoke at the banquet, the following present or past officials took part: Mr. Platt Rogers, Denver, Colo.; Secretary W. Thomas Kemp, Baltimore, Md.; Mr. William O. Hart, New Orleans, La.; Mr. John Hinkley, Baltimore, Md.; Mr. John H. Voorhees, Sioux Falls, S. D.; Judge William H. Staake, Philadelphia, Pa.; Mr. Charles M. Potter, Cheyenne, Wyo.; Mr. John Lowell, Boston, Mass.; Mr. Ashley Cockrill, Little Rock, Ark.; Mr. T. A. Hammond, Atlanta, Ga.; Mr. U. S. G. Cherry, Sioux Falls, S. D.; Mr. Charles Thaddeus Terry, New York, N. Y.; Mr. Edmund F. Trabue, Louisville, Ky.; Mr. George B. Young, Montpelier, Vt.; Mr. Paul Howland, Cleveland, Ohio; Judge Thomas C. McClellan, Montgomery, Ala.; Mr. Hugh H. Brown, Tonopah, Nevada; Mr. John B. Corliss, Detroit, Mich.; Mr. John T. Richards, Chicago, Ill.

A cable was received from Mr. Horace R. Bailey, of Boston, Mass.

A Memorable Week

"The annual meetings of the Bar Associations have left a plenteous and interesting aftermath. It was a warm week, much warmer than the one preceding or following, but the heat was taken good naturedly, and we doubt whether there were many who did not enjoy every hour of three days' session in Cincinnati and one day in Dayton. The registration at both the American and State headquarters was the largest in many years. The formal addresses were worthy of the occasion, and with few exceptions were delivered in a manner which created and held close attention. The debates—and some of them were real debates—were spirited and by men who knew what they were talking about. And last, but not to be left unmentioned, was the abundant opportunity for seeing and hearing and meeting face to face men of national reputation."—*Ohio Law Journal and Reporter.*

AMERICAN BAR ASSOCIATION JOVRNAL

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THE CINCINNATI MEETING

The marked increase in membership within the last year brought to the annual meeting many new faces and a larger proportion of the younger men of the profession than usual. This remarkable growth and the advent of new blood gave the sessions a sense of power and vitality that made itself felt even in the vitiated atmosphere of the lobbies of the hotels.

There were also notable figures and notable utterances in regard to which limitations of space forbid comment here. The best of everything will be reproduced in other columns of this and subsequent numbers. The Chief Justice of the Supreme Court of the Nation participated in the sessions of the Judicial Section and presided over the annual banquet. His earnest advocacy of the pending legislation for the appointment of additional District Judges "at large" and the convincing argument in favor of that plan assured strong support in the Association for the passage of that measure.

The guest of honor, Sir John Simon, former Attorney General of England, came a stranger and left behind him a host of friends. His address under the title, "Our Common Inheritance of Law," printed in full in another column, proves him to be a scholar, philosopher and diplomat. His remarks at the banquet presided over by the Chief Justice were brilliant, eloquent and of the most delicious humor. It is difficult to conceive how anyone could have produced a better example of perfect after-dinner oratory.

The hospitality of the Cincinnatians was gracious and genuine.

Next year's meeting cannot easily improve on the one which has just closed, unless perhaps by the selection of a better season of the year. If some ideal time and place were chosen by the Executive Committee, would not the courts of all the land adjourn the cases of those whose sense of duty and pleasure united to prompt them to attend? And, in addition to the faithful ones who have heretofore attended, could we not expect to have the attendance of those also who have regarded their vacation season so important for the restoration of health and vigor as to refuse to devote any part of that precious season to work of any sort, even though it be work as important and interesting as that of the annual meetings of the American Bar?

INCORPORATION OF THE BAR

In his address to the delegates of State and Local Bar Associations Mr. Elihu Root, speaking of the organization of lawyers, said:

> The creation of institutions which, in an orderly way, may crystallize and present and preserve the opinions of men who are especially competent to form them in each field and branch of public affairs, is a necessary part of the process of free self government.

These words require no added emphasis here. They announce a great truth, of vital importance to the profession, and they should be taken to heart, considered and turned into action.

Assuming as a premise that every right-minded lawyer who appreciates his duty to his profession should belong to his Local, State and National Bar Associations, the question remains how best to accomplish this result. Of course, the obvious answer is that under present circumstances this work of organization must be done by the existing available agencies, and that the appropriate committees on membership should conduct a vigorous campaign of legitimate propaganda, so that every reputable lawyer of every community should be brought to see his three-fold duty and its manifold benefits and should do it.

There are those, however, who advocate a different and a more far-reaching method of accomplishing this result. They favor the enactment of laws which shall incorporate the bar, make all who have heretofore been admitted to the profession members of a body corporate and politic with self governing powers, including the power to pass upon the qualification for admission and to disbar those who have been proven to be unfit. The scheme, in the form most usually

presented, gives to the Supreme Court of the State supervisory power over admission and discipline.

It is not intended to discuss here the merits or demerits of this plan, save in a single particular.

The average American citizen regards the making of a law as the proper method to cure existing evils and to accomplish desired improvements; but surely the lawyer has smiled his quizzical smile at this naïve attitude of the uninstructed and inexperienced layman for a sufficient number of generations to justify the inquiry whether there might not be some other way to accomplish the desired end than the way which leads through legislative assemblies.

To such inquiring minds (and to the Committee on the Incorporation of the Bar) it is suggested that there may be another, an easier and perhaps a better way.

It is universally held by all the decisions that a lawyer is an officer of the court, that he owes to it a special allegiance and resulting duties of a well defined character, touching not only his demeanor in the court room, but the determination of his qualifications for admission to the bar and his accountability to discipline for every act done in the exercise of the privileges and prerogatives bestowed upon him by the license to practice. It has been held that because of the fact that lawyers are officers of the court, the legislature invades the judicial province when it attempts to prescribe the qualifications which will entitle an applicant for admission to the bar to a license, and that such laws are therefore unconstitutional and void. (In re Day, 181 Ill., 73.)

Since, therefore, lawyers are officers of the courts and are a part of the judicial institution, why is it necessary to seek for any further grant of power from the Legislative Department? Has not the Judicial Department inherent power to deal with the question of the organization of all its officers, the creation of sub-divisions, geographical and functional, and the assignment of special duties to special sub-divisions or groups? It is already firmly in possession of the power to examine for admission and to disbar, and it usually exercises these powers with the aid of examining committees and grievance committees. Is there any essential part of the proposed plan to incorporate the bar which cannot be accomplished at once by the co-ordinated effort of judges and lawyers?

LAW AND ECONOMICS

Legislation opposed to an overwhelming informed or uninformed opinion has a way of not getting itself enforced. This observation has been so frequently made that it is all but trite. Though legislation conforms to the dominant opinion on the matter in question, it may still be largely evaded if it runs counter to underlying, though unknown, laws of economics. The latter type of legislation will frequently do more harm than the former for there will be continued attempts to enforce it. Some novel methods of evading our statutes limiting interest remind us that such statutes may belong to legislation of the second sort. Builders now complain that they cannot get loans unless they take a "dog" and the "dogs" offered are expensive to building, being undesirable real estate or debts which the lender desires to "sell" to the borrower. Thus the effect of legislation limiting interest charges is nullified and the building industry is subjected to uncertainty and delay. On the one hand we say, "Do not limit rents and they will increase to a point which will attract capital to building projects," and then on the other hand we say, "True, rents are so high that builders can now pay an interest rate which will attract capital but to charge such rates would be usury." It may be that the regulation of the price of money like the price of other things might better be left to the law of supply and demand except in the case of consumption loans of the sort commonly made by so-called loan sharks.

THE SECOND YEAR

With this issue the JOURNAL begins its second year as a monthly. The first year was naturally an experiment in various directions. Whatever advance was made towards the goal of a magazine of professional value was largely due to the active cooperation of various members of the Association. The Board of Editors trust that the members will do even more during the coming year to make their magazine what it should be.

CONTRIBUTIONS

The board of editors wish the members of the Association to feel that the JOURNAL is a forum in which every question of broad interest to the profession in general may be discussed. Articles and letters are welcomed and those who send them may be assured that they will receive prompt and careful attention.

FORTY-FOURTH ANNUAL ASSOCIATION MEETING

Record-Breaking Attendance, Significant Utterances and Important Decisions Mark Meeting in Cincinnati—President Harding Sends Greeting to Association—Lively Debates in Sections and on Floor of Main Body—Chief Justice Taft and Other Notable Figures Present—Report Shows Great Increase in Membership—Other Details

IN point of attendance, enthusiasm and the significance of things said and done, the Cincinnati meeting stands out as one of the most important in the history of the American Bar Association. In spite of the temperature, of which it is entirely just to say Cincinnati had no monopoly during the period devoted to the meeting, all the sessions, both of the Association and of the subsidiary and allied bodies, were well attended, and the closest attention was given to the addresses and questions presented for discussion. In the large attendance, which broke all records, and the unmistakable interest of those present could be sensed a real conviction of the growing usefulness of the Association to the profession and the country as a whole.

The speeches were able and illuminating. Some are reproduced in this issue of the JOURNAL, and it is hoped to present the others in following issues. The address of Hon. James M. Beck, Solicitor General of the United States, summed up in notable fashion the many manifestations of revolt against the spirit of authority in political, moral, social, industrial and even artistic fields, and concluded with a strong expression of belief that the indomitable spirit of man would triumph over them. Attorney General Daugherty set forth strikingly various circumstances making for a growing disrespect for law, and announced his official creed as to the enforcement of national laws in no uncertain terms. Ex-Senator Charles S. Thomas pointed out, with a detail possible only to one of his long and intimate experience in public affairs, present tendencies to blur the clear distinctions between state and national governments and to look to the federal government more and more as a source of general assistance, with all the evil consequences that spring therefrom.

Ex-Governor Charles S. Whitman, of New York; Judge Marcus A. Kavanagh of Chicago, and Mr. Luther Z. Rosser of Georgia made the symposium on "The Administration of Criminal Justice" one of the most important and instructive features of the program. The Rt. Hon. Sir John A. Simon, K. C., of London, former Attorney General of England, and Hon. John W. Davis, of New York, former Ambassador to Great Britain, emphasized most happily in their speeches the international legal "entente cordiale" which the American Bar Association has done so much to create and maintain. In addition to all these, there were other speeches in sections and on the floor of the meeting which attracted attention. Among these particular mention must be made of the informal address of Chief Justic Taft, before the Judicial Section, on the responsibility of the legislature for defects in the administration of justice, the need for an increase in the number of federal district judges, and the propriety of adopting the executive principle of assignment of judges to the places where they are most needed.

Unusually spirited debate marked certain sessions of the convention. Presentation of the report of the Committee on Legal Education, establishing a more difficult standard for admission to the bar, immediately gave rise to a heated discussion. At its conclusion the Association went on record in favor of requiring two years of study in college and three years in law school as a condition for admission to the practice of law. The report of the Committee on Aviation stirred up debate over the need for a constitutional amendment giving the federal government complete control over the subject. The Association finally approved the recommendation of the Committee on the Law of Aviation, that Congress pay particular attention to the constitutional features of proposed legislation. The resolution condemning Judge Landis for accepting the position of baseball commissioner while retaining the place of federal judge also provoked discussion, but was adopted by the Association.

Various other decisions of the Association will be found in the detailed proceedings which follow. There may be mentioned here its indorsement of the pending bill increasing the salaries of certain employees in the Patent Department, which measure is similar in these provisions to the Nolan Bill, approved at the St. Louis meeting; ratification of a proposed amendment to the constitution of the Asssociation changing the Committee on Legal Aid from a special to a standing committee; adoption of a resolution authorizing the Association's representatives at the conference of Bar Association Delegates to take up the subject of providing for a uniform interpretation and administration of the canons of ethics throughout the United States; approval of certain amendments to the Declaratory Judgment Bill, to remove questions that have arisen since the St. Louis meeting; reaffirmation of its former position that the date of the Presidential inauguration should be changed; and a recommendation that Congress increase the compensation and allowance for travel of grand and petit jurors.

A notable feature of the meeting was the report of the Committee on Membership submitted by Frederick E. Wadhams, chairman. That report showed that the campaign which began several months ago, and followed the plan approved by the Executive Committee at New Orleans, had achieved really remarkable results. It had added 3,560 new members to the Association and brought the total membership to the highest point in its history. What is more, the organization which effected these results will continue to function and can doubtless be relied on to achieve equally important results in the future.

Two rather unusual incidents marked the meeting. One was the presentation of a "sake," or drinking cup, to the American Bar Association by a representative of the Japan Bar Association as an expression of a common professional interest. The other was the banquet given to Treasurer Wadhams, and the presentation of a loving cup to him as a token of appreciation of his many years of service to the Association. The affair was not on the regular program and was an entire surprise to Mr. Wadhams. The reg-

ular banquet Friday evening, at which Chief Justice Taft presided and where distinguished guests made after-dinner speeches; the excursion to Dayton on Saturday, and the barbecue at Latonia, were all greatly enjoyed by those who participated. The arrangements of the various organizations and committees in Cincinnati for the entertainment of the visiting members and their ladies contributed in no small degree to the success of the meeeting, and on all sides expressions of appreciation of the generous hospitality were heard.

Acting President Hampton L. Carson, who had been selected by the Executive Committee to fill the vacancy caused by the death of President W. A. Blount, called the first session to order, and immediately requested the members to stand for a moment in silence as a mark of respect to the memory of the late President. This was done.

Vice-Mayor Carl Jacobs, of Cincinnati, then delivered an address of welcome in place of Mayor Galvin, who was detained by illness.

Mr. Jacobs expressed his regret that Mayor Galvin was unable to extend the welcome of Cincinnati and of the Cincinnati Bar Association. He referred to the particular interest which the mayor had taken in the arrangements for the meeting. All appreciated the courtesy of the Association in coming to Cincinnati, a city which had given so many distinguished men to the bar, and one in which professional interest and efficiency were well attested by the great law library which it possessed and which was one of the finest in the world. This was the first time there had ever been a joint meeting of the American Bar Association and the Ohio State Bar Association, and all felt it would result in great good. He concluded by saying that everything in the city was at the disposal of the convention, and that its greeting was with open arms and with the warmest of hearts.

Message From President Harding

President Carson thanked him on behalf of the Bar Association for the cordiality of his welcome and then proceeded to read the following letter from President Harding, which was in the nature of a message to the Association:

The White House, Washington,
August 24, 1921.

My Dear Mr. Carson:

It is with the greatest reluctance and regret that I am writing to say that it is impossible for me to accept the invitation to the annual meeting of the American Bar Association some days hence. As you know, when this occasion was first brought to my attention, with a cordial invitation to be present, I feared that my attendance would not be possible, but was unwilling finally to decline, hoping circumstances might change. That hope has been disappointed, and I am now definitely notifying you of the fact.

Not merely because this year you will present an especially notable program of discussions and addresses, but because as a body the American Bar Association is one of the great constructive forces in behalf of the reign of law and equity everywhere, I would like to be with you. Nowhere is there crystallized, I believe, a finer conception of freedom under the law, a broader, more human and unselfish purpose of service, progress and betterment, than in this association. Here we find attested the highest ethics of a noble profession. These are the only ethics that have ever found expression in your activities, and from your annual meetings they have been reflected to court, consultation and bar everywhere. They have lighted the way to legislative achievement, administrative advance and a constant, conservative measure of social progress. Not only in our own country, but in all others which live under the ever-developing institutions of democratic impulsion checked and tempered by judicial progress, the American Bar Association has earned exalted repute for unswerving idealism coupled with sound discretion. You have never failed to recognize that the community of lawyers owes a peculiar responsibility to the community of all men who must live under the law. You have understood that, socially as well as biologically, man must either progress or retrograde; he cannot stand still, and no more can his institutions. So your aspiration has always been for a worthy part in leading the evolutionary development that human relations must always be undergoing if there shall be avoidance of avulsive, perhaps revolutionary, changes.

It will not overstep the proprieties of such a note as this, I trust, if I suggest how greatly the nation and the world—indeed, our very civilization—at this time need a firm adherence to these lofty aims, by those who, like yourselves, are particularly well equipped to help direct these social and political operations. We would be blind indeed if we did not recognize that there is a tendency to examination and inquisition even of traditions and institutions that once were held elemental, almost sacred. No greater influence than your own could be arrayed in favor of open-minded, disinterested inquiry into the justification for these criticisms; and if you adopt a liberal attitude toward such inquiries, you will be the more potent in safeguarding the good that we possess and rightly shaping the measures of progress that we must have.

It is because I look upon the American Bar Association as second to no agency in qualification for this high usefulness, that I must keenly regret my inability to be with you and receive the inspiration that I know would come from a participation in the intellectual feast that your program promises.

Most sincerely yours,
(Signed WARREN G. HARDING.

Mr. Hampton L. Carson, Acting President, The American Bar Association, 1524 Chestnut St., Philadelphia, Pa.

Reports of Officers

The reports of the Secretary, Treasurer and Executive Committee were read, received and approved. That of the Secretary showed that 4,446 new members had been elected during the past year. It also pointed out that the office had kept in close touch with the state organizations during that period.

The Treasurer's report showed total receipts, for the past year, including cash on hand at the date of the last report, of $102,233. Total disbursements for the same period, $89,467, leaving a cash balance on hand of $12,766. The expenses of various committees during the year had amounted to $14,780. The expense of issuing the annual report was $17,153, and of the Journal, $29,430. The cash received in dues during the past year was $77,568.

The report of the Executive Committee first touched on the death of the late President of the Association, Hon. William A. Blount, and expressed the profound sorrow of the committee at that unfortunate occurrence. It mentioned the committee's selection of Hon. Hampton L. Carson to act as president until the next regular election, its request that Hon. James M. Beck deliver a presidential address, and gave various details in connection with the Journal, the appointment of certain committees, and the appropriations for the use of the regular committees.

Acting President Carson then presented Hon. James M. Beck, Solicitor-General of the United States, who spoke on "The Spirit of Lawlessness."

The second session of the Association was a joint session with the Ohio State Bar Association. After calling it to order President Carson yielded the chair to president Iddings of the Ohio State Bar Association.

President Iddings declared that this was indeed an auspicious occasion, this melting pot of the two great organizations of the bar of the United States—

an allusion to the temperature which provoked smiles. He then introduced Attorney-General Daugherty, the speaker of the day, who delivered an address on "Respect for Law." On account of lack of space it was impossible to include this in the present issue of the JOURNAL, but it is highly probable that the publicity which was given to his striking declarations of intention to enforce all laws, without fear or favor, has already made its general tenor fairly familiar to the public.

Addresses of Sir John Simon and Mr. Davis

Sir John A. Simon, former Attorney-General of England, and Hon. John W. Davis, former Ambassador to Great Britain, were the principal speakers at the third session Wednesday evening.

Hon. Elihu Root presided. After opening the session he stated that when it was the duty of the presiding officer to present to an audience the finest flowers of advocacy in the bars of Great Britain and America, he did not delay by speech-making of his own. When one was in a distant land, in that frame of mind in which the sight of his country's flag brought a little choking in the throat, it was inexpressibly delightful to learn that his country was represented in that foreign land by one of the noblest and ablest of his countrymen. Such a representative of America, of whom all the Americans were entitled to be proud, was the Hon. John W. Davis, now of New York, but by the habit of a life time of West Virginia.

Mr. Davis then delivered his address, which appears elsewhere in this issue. At the conclusion Mr. Root introduced "Sir John A. Simon, King's Counsel, formerly Attorney-General of England, and acknowledged as the rightful leader of the English Bar."

He was greeted with much applause. Tall as Lincoln, with perhaps a faint suggestion of his lankiness, easy of manner, deliberate and extremely precise of speech, and the possessor of a voice of carrying power, Sir John made an extremely good impression upon the audience. His speech was far from academic in character, being interspersed with many anecdotes and personal allusions which were much appreciated by his hearers. He proved himself an unusually acceptable hot weather speaker.

At the conclusion of his address, printed elsewhere in this number, Mr. Hampton L. Carson delivered a tribute to the memory of the late Chief Justice White. This was followed by a memorial to the late President William A. Blount, delivered by Mr. Scott M. Loftin, of Jacksonville, Fla., and by one to the memory of Stephen S. Gregory, presented by Mr. John T. Richards, of Chicago.

Reports of Sections and Committees

The fourth session, presided over by Mr. Frederick W. Lehman, of St. Louis, was devoted to reports of sections and committees.

Mr. Edwin M. Abbott, chairman of the Section of Criminal Law, stated that much work had been done on that subject at the meeting this year. The section now had a rightful place on the program, in that last year it had been made a regular section of the Association. As a result of efforts during the past year, 128 new members had been added to the section, among them the present Attorney-General of the United States. The rolls now carried over 500 persons who had manifested an interest in its special work.

At this juncture Miss Mary Lathrop, of Denver, Colo., one of the woman members, offered a resolution that the gentlemen be permitted or asked to remove their coats. The motion was seconded and unanimously carried.

Mr. Robert P. Shick, on behalf of the Section of Comparative Law, stated that it had been gratified with its work during the past year and with the renewed cooperation of others. It believed that the work would be of increasing interest to the members of the Association in the future. He announced that Mr. Smithers was with the Section again as its chairman.

Judge Charles A. Woods, chairman of the Judicial Section, stated that its attention for the past year had been confined almost exclusively to calling the attention of the appellate judges of the United States, both federal and state, to the bill now before Congress giving the Supreme Court of the United States the power and directing it to frame a simple code of procedure and practice in the courts of the United States, and providing further that when those rules shall have been promulgated, all the statutes of the United States relating to practice and procedure shall thereby be repealed.

The hope was that such a simple code would constitute a standard that all states would work for and would eventually result in the simplification of procedure and practice in the entire country. An overwhelming majority of the federal judges directly concerned who responded to a questionnaire on the subject had approved the proposal.

Resolutions on Admission to the Bar

Elihu Root, Chairman of the Section on Legal Education, presented certain resolutions which provoked an exceedingly warm discussion. There were:

Resolved, (1) The American Bar Association is of the opinion that every candidate for admission to the bar shall give evidence of graduation from a law school complying with the following standards:

(a) It shall require as a condition of admission at least two years of study in a college.

(b) It shall require its students to pursue a course of three years' duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

(c) It shall provide an adequate library available for the use of the students.

(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

(2) The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness.

(3) The Council on Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools which comply with the above standards and of those which do not, and to make such publications available, so far as possible, to intending law students.

(4) The President of the Association and the Council on Legal Education and Admissions to the Bar are directed to co-operate with the state and local bar associations to urge upon the duly constituted authorities of the several states the adoption of the above requirements for admission to the bar.

(5) The Council on Legal Education and Admissions to the Bar is directed to call a conference on legal education in the name of the American Bar Association, to which the state and local associations shall be invited to send delegates, for the purpose of uniting the bodies represented in an effort to create conditions favorable to the adoption of the principles above set forth.

Discussion of Resolutions

Mr. Root stated that the resolutions in their substance clearly reproduced expressions which have

already been rendered, in perhaps less positive form, by the American Bar Association. With regard to the two years in college, the Association had expressed itself by formal resolution in 1918. In 31 of the 41 states having law schools all of the schools required a three years' law course now. In the other ten states the majority of the law schools required a three years' course. He moved the adoption of the resolution.

Mr. Henry E. Davis, of Washington, stated that it was with some diffidenee that he felt constrained to express the hope that the resolution would not receive approval. He directed attention to Bulletin No. 15, issued by the Carnegie Foundation, on Training for the Public Profession of the Law, comprising 420 printed octavo pages. He stated that this bulletin was prepared at the request of a special committee of the Section on Legal Education and that the Carnegie Foundation had spent eight years of patient labor in response to this request, and had only last Saturday made public the results of its investigations. He therefore offered, as a substitute for the resolutions of Mr. Root, a resolution pointing out, among other things, that it was highly desirable as a guide to intelligent action that opportunity should be given members to examine that bulletin, and providing that consideration of the resolutions and report be postponed until the next annual meeting.

Mr. Root, in reply, stated that the resolutions on which the Section on Legal Education had acted were prepared in conference with the authors of the report referred to, after a long study and consideration of that report, and they were prepared in order to meet, in so far as seemed practicable now, the reasoning and statements of that report. He opposed using the report on which the committee based its recommendations as a ground to postpone action.

In his opinion it was a question of whether we would have any standards at all. If we did, the line had to be drawn somewhere. Wherever it was drawn, there would be somebody who would be inconvenienced. He would be sorry to have gentlemen representing law schools that did not care to conform to that standard inconvenienced, but he cared a great deal more about the honor and dignity of the American Bar than about their convenience. He cared more about having the Bar an agency competent to secure effective administration of justice in this disturbed country, more about having somebody in America, some organized body, with the courage and decision of character that makes it competent to meet the new conditions that confront us, and which are tending to bring the law and the administration of the law itself into disrepute and ineffectiveness, than he did about the inconvenience of however close a friend.

Plea for Postponement.

Mr. William A. Ketcham, of Indiana, spoke in favor of postponing the resolution. He declared it was with the greatest embarrassment that he found himself unable to follow the lead of the great lawyer from New York and the Chief Justice of the United States. He pointed out, however, that Indiana had had many great lawyers, notably Gen. Harrison, who had managed to achieve eminent success without having had a certificate from a law school.

A full consideration by the Association of the matter could not do any harm. Such consideration might very well lead to the belief that what was recommended was wise and just, but the members wanted to find out that for themselves and not simply to bow to the edict of a committee that had digested and approved the Carnegie report. If the matter were passed on now, it would be said that it was the result of the influence of the law schools of the country, and it would meet with the disapproval of the members of the Association. He wanted an opportunity for himself and others to ascertain carefully what was in the committee's report and also in the Carnegie Foundation bulletin, before action was taken.

Mr. James D. Andrews, of New York, said that the assumption that the adoption of the report would exclude able and intelligent young men from becoming members of the bar was entirely unfounded. The answer to the list of brilliant men enumerated by Mr. Ketcham was that this was the year 1921, not the year 1856 or 1860. Conditions had changed. Had the requirements been that one year of college education or two years of college education must be taken as a preliminary to the study of law, the great lawyers mentioned would have secured that advantage. The fundamental question was whether the legal profession be ranked as a learned profession.

Mr. Edward T. Lee, of Illinois, opposed the adoption of the resolution. He regretted to appear in opposition to the men who, nominally at least, stood for the report, but he appealed to the convention to hear the other side. He had no objection to a man's getting his education at college, but he would stultify his honest convictions if he should say that one cannot become an educated man outside of college.

This report proceeded from the Association of American Law Schools, in his opinion, by way of the eminent committee of the American Bar Association. With all deference, he submitted that that was mere camouflage—a way of getting it before the Association with the prestige of eminent men behind it. He denied that the Association had ever gone on record as advocating a two years' college course, except for law schools of the first class. At the meeting of the committee to which some gentlemen had referred no representative of any evening law school west of the Allegheny mountains had been invited to be present. It was a close communion of the higher colleges and those who were their sponsors, and the other schools were entirely ignored. He would not for a moment suggest that a body of this intelligence was going to be swayed by the advocacy of the report by eminent lawyers.

Mr. Nathan William MacChesney, of Illinois, said that the real question at issue was whether the bar was to maintain its comparative standing in the United States or whether it was to take a second place. The bar was prepared, in his opinion, to go forward in advancing the educational standards and to lay down certain minimum requirements. There are today 600,000 men in the colleges of the United States as against 120,000 ten years ago. The requirement of a two years' college course is today less of a burden than the requirement of a high school education would have been a decade ago. The young man who really has the ability to succeed at the bar can under present conditions get his two years' of college work. He pleaded on behalf of the young men coming from limited educational surroundings. A young man not in contact with the real sentiment of the bar might be misled into going to schools of lower standard, when he would go to a school of a proper standard if the

American Bar Association were on record in favor of that standard.

Mr. George A. Nelson, of Alabama, saw no objection to deferring the matter for a year. He believed that a man who was admitted to the bar should stand the strictest examination, but objected to too strict a provision as to how he got his legal knowledge. It mattered not whether it was through a law school or in any other way. It was true that the provisions for legal education were at present much better than they had been on the whole, but that was only true in certain sections.

Mr. E. Donnelley, of Illinois, was against the proposition to defer consideration of this important question for another year. If the meeting was not capable of deciding it then, when would it be capable of deciding it? Any young man who was worth while and who really wanted to enter the profession would make the sacrifices necessary to do so. In fact, he could not be kept out of the profession.

After Mr. Davis had risen to a point of personal privilege and disclaimed any connection with any law school whatever, the previous question was put and carried. Mr. Davis' substitute resolution was thereupon voted down and the recommendations of the Section on Legal Education were approved.

Patent Office Salary Increase Urged

Mr. A. C. Paul, chairman of the Section on Patent, Trade-Mark and Copyright Law, presented its report. At the meeting at St. Louis a year ago the American Bar Association had adopted a resolution urging the passage by Congress of what is known as the Nolan bill, increasing salaries of the force in the Patent Office. This bill, with certain additions, had passed the House the last session, but had failed in the Senate. However, a bill was now pending before the present Congress, which had been favorably reported by the Patent Committee, and which contained the same provisions in reference to salaries that were in the Nolan bill. The section urged that this bill be approved and that its speedy passage by Congress be recommended. The resolution was adopted.

Mr. E. A. Armstrong, of Newark, N. J., presented a report on behalf of the Section of Public Utility Law. The attendance at the fourth annual meeting had been quite large, the papers presented had been unusually illuminating, and the meetings had been full of interest. The report was received and filed.

Judge Henry Stockbridge presented the report of the National Conference of Commissioners on Uniform State Laws. Judge Stockbridge said that the conference had just finished its thirtieth annual meeting. During its history it had reported many bills, and of these 295 had received favorable action in the various states. Within the past twelve months the number of bills adopted by the various states had been 24. The conference recognized that it served no good to formulate a uniform act unless it could be adopted by state legislatures and placed on the statute books. For this reason it had directed its efforts during the past year toward securing action by legislatures upon acts which had already been passed upon and which had received the approval of the Association. The Conference now had under consideration a uniform law relating to the duties, rights and obligations of fiduciaries; a law on declaratory judgments, proposed amendments, so called, to uniform commercial acts, and an act relating to the proper provision for illegitimate children, and also an act to regulate the operation of aeroplanes. After a long debate the Conference had referred those acts to the committee where they originated for further consideration, in order to secure the greatest possible perfection in the work. A further report would be made next year on that.

The meeting thereupon adopted resolutions approving the steps taken.

Mr. Stiles W. Burr, chairman, reported on behalf of the Conference of Bar Association Delegates. The meeting on Tuesday had been largely attended and had been very enthusiastic. Delegates from 43 state associations had been present, while 72 delegates representing local bar associations took part. Fully 500 people had been in attendance at the meeting during the day. One feature of the program was a conference on professional ethics under the auspices of the Committee on Professional Ethics and Grievances. The Conference had no request for action to make to the bar association.

"Legal Aid" Made Standing Committee

Secretary Kemp announced that the second and third proposed amendments to the Constitution, published in the June issue of the JOURNAL, had been withdrawn. The first amendment, adding the Committee on Legal Aid to the list of standing committees, was offered for ratification. It simply changed a special committee to a standing committee of the Association. The amendment was adopted without opposition.

Mr. Edward A. Harriman, chairman of the Committee on Professional Ethics and Grievances, presented its report. It recommended that the representatives of the American Bar Association to the Conference of Bar Association Delegates be requested to take up with the conference the subject of providing for the uniform interpretation and administration of the Association's canons of ethics throughout the United States and to report to the Association upon the matter; also that the committee be authorized to co-operate with the Committee on Commerce, Trade and Commercial Law in the preparation of rules governing the subject of professional ethics in relation to trade associations. These recommendations were approved.

Mr. Francis B. James, chairman, presented the report of the Committee on Commerce, Trade and Commercial Law. In dealing with certain subjects from their commercial side only the committee had touched on some which were in part covered by the activities of the Committee on Jurisprudence and Law Reform and by the activities of the Commissioners on Uniform State Laws. After a conference with members of those bodies, the committee had decided to amend four of its recommendations. It withdrew the suggestion that the Association should not adopt a resolution indorsing the pending senate bill pertaining to declaratory judgments in the federal courts, and asked that the matter be referred again to the Committee on Jurisprudence and Law Reform. It also asked that its recommendations regarding the uniform state warehouse act, the uniform state sales act, the uniform state declaratory judgment act, and the uniform state arbitration act be referred back to the Commissioners on Uniform State Laws.

The administration of justice had occupied a great deal of the time of the committee and it had taken the subject up with Chief Justice Taft and Attorney-General Daugherty. The committee believed that the administration of justice could be advanced by having various provisions of state and federal statutes on the subject of arbitration enforced, and further by the

creation of what might be termed a "flying squadron" of federal judges, to be sent from one part of the country to another as needed.

The committee had also considered some method for the rapid disposition of commercial cases. It had turned to England to see what had been done there in this matter and had found that the High Court of Justice of England, under the Judicature Act, had by rules provided that it would sit as a commercial court. Its suggestion was that district judges, just as they now sit as a bankruptcy court, should also sit as a commercial court for the disposition of commercial cases. It had not yet worked out the details of the bill. Mr. James concluded by asking that the committee recommendations, with the changes above set forth, should be adopted, which was done. These recommendations were printed in the August JOURNAL.

Mr. Clarence W. DeKnight offered a resolution requesting the Committee on Commerce, Trade and Commercial Law to consider the bill now pending in Congress providing for the payment of interest on judgments rendered against the United States for money due on public work, and to report its conclusions at the next annual meeting of the Association. Adopted.

Mr. Arthur I. Vorys presented the report of the Committee on Insurance Law. It merely requested that the bill now pending in congress, which had met with the approval of the Association in St. Louis, be again urged for passage. Matters of vital importance had prevented the last Congress from taking up the bill, but it had again been introduced in the Sixty-Second Congress and there were assurances that shortly after recess it would be taken up.

Jurisprudence and Law Reform Recommendations

The report of the Committee on Jurisprudence and Law Reform was presented by Chairman Everett P. Wheeler. Its first recommendation, he stated, was with regard to the removal of causes from state to federal courts. At its last meeting the Asssociation had recommended an amendment to section 28 of the Judicial Code, defining the term "proper district." It had been pointed out, however, that certain federal courts had decided that section 51 of that Code, conferring original jurisdiction on the district courts, limited even the express provisions of section 28. The committee therefore recommended that the words, "notwithstanding any provision of section 51," be inserted in the bill as originally recommended, and that its passage by congress be urged.

The next recommendation was that in the bill providing for declaratory judgments it would be well to have the express statement that these petitions should be presented in cases in which, if suits were brought, the courts of the United States would have jurisdiction. It was perhaps unnecessary, but it was advisable in view of the conflict of opinion that had arisen on the subject. The committee also recommended in its report that the words, "when there is an actual controversy between the parties," and also an affirmative grant of power, should be inserted in the bill before congress.

Simplification of the machinery of appeal in federal courts was contemplated in the third recommendation. No bad consequences had followed abolishing the cumbrous machinery of appeal in various states. The committee proposed the passage by congress of a bill abolishing writs of error and providing that all relief which heretofore could be obtained by a writ of error should hereafter be obtainable by appeal; providing further that appeals might be taken by filing a notice of appeal with the clerk of court and notifying the adverse party of the action; further, that no petition of appeal or allowance of appeal should be required, subject to the exception that the review of judgments of state courts of last resort should be petitioned for and allowed in the same form as now provided by law for writ of error to such courts.

The committee further recommended that a bill should be passed providing that the loss of civil rights in case of conviction for crime in a federal court, where the penalty might be imprisonment for more than a year, should not be effective unless there was actual sentence to imprisonment for more than a year. At present the law is that a person convicted of a crime carrying a penalty of possible imprisonment for more than a year loses his civil rights, although the conviction may be for a technical offense, and one for which the court will not sentence him to imprisonment.

The committee further recommended that it be authorized to confer in regard to the joint resolution in congress relating to a joint commission to revise federal procedure, with the object of making it clear that the purpose was not to repeal the Judicial Code, but simply to bring about certain results which all agreed would be desirable.

It further recommended the passage of a resolution that congress should increase the pay and travel allowances of grand and petit jurors and witnesses of Federal District Courts, so that they may better meet the increased cost of travel, subsistence and lodging; also that it be authorized to confer with appropriate committees of congress relative to legislation now pending concerning the Court of Claims.

On motion the various recommendations of the committee were approved.

Mr. Martin Conboy, chairman of the Committee on Publicity, presented a report showing the gratifying extent to which the activities of the Asssociation and of its members had received notice and consideration in the press during the past year. He urged that the committees keep the Publicity Committee informed of their activities, and that members of the Association endeavor to interest their local press in the various efforts of the organization. The committee particularly appreciated the splendid co-operation of the newspapers of Cincinnati and of the Associated Press in making public the proceedings of the meeting then in progress.

The able address of Ex-Senator Thomas of Colorado was the main feature of the fifth session. But an unexpected and additional element of interest was injected into the proceedings by the presentation of the resolutions condemning Judge Landis for accepting the position of baseball commissioner at a salary of $42,500 a year while retaining his position as federal judge.

After calling the session to order and before presenting Senator Thomas, Hon. George Sutherland, who presided, announced that after the address of the evening there would be other important and interesting business and he trusted the audience would remain. He then introduced Senator Thomas as the type of public man eminently possessing the two essential qualifications for public service—wisdom and courage. The address followed.

Gift From the Japan Bar Association

At the conclusion of Senator Thomas' address came the presentation of a "Sake Cup," or, as the

NEW MEMBERS OF EXECUTIVE COMMITTEE

THOMAS W. SHELTON
Norfolk, Va.

S. E. ELLSWORTH
Jamestown, N. D.

THOMAS W. BLACKBURN
Omaha, Neb.

WILLIAM BROSMITH
Hartford, Conn.

Japanese call it, "Sakadzuki," to the American Bar Association by Dr. Masujima, a representative of the Japan Bar Association.

Dr. Masujima, who is one of the leading lawyers of Japan, wore his native costume and made an interesting and curiously exotic figure on the platform. He stated that he had been commissioned by the Japan Bar Association to present the cup as a token of the high esteem in which the American Bar Association is held in Japan. "We look up to you," he said, "as to the preceptor of bar associations, whose example it is the wish of the members of the Japanese bar to follow in carrying out the ideals of the modern bar."

The cup, he explained, was used for drinking "sake," the Japanese national beverage. And while some might doubt its usefulness in these days, when "sake" cannot be imported to the prohibition shores of America, such doubts were not well founded, since pure, clear water is in Japan the symbol of friendship and equally useful for drinking toasts. He explained the decorations of the cup—the pine, bamboo and plum trees—as signifying constancy, purity, and character, as sung by the Japanese poets.

Mr. Hampton L. Carson accepted the gift on behalf of the American Bar Association, as a token of the new spirit that was abroad among the nations. Mr. Piatt then read an address which Dr. Masujima had prepared. At its conclusion Mr. Toshimaro Yamato, a delegate from the Japan Bar Association and a lawyer who has been connected with various American commercial interests in Japan, read an interesting paper on the subject of the legal position of foreigners in that country and particularly of American companies and American citizens.

The Landis Resolution

The chairman then announced that Mr. Carson had a matter to submit, and Mr. Carson thereupon stated that by the unanimous vote of the Executive Committee he presented the following resolution:

> Resolved, that the conduct of Kenesaw M. Landis in engaging in private employment and accepting private emolument while holding the position of a Federal Judge and receiving a salary from the Federal government, meets with our unqualified condemnation, as conduct unworthy of the office of Judge, derogatory to the dignity of the Bench, and undermining public confidence in the independence of the judiciary.

Mr. Carson then read Article IV of the Constitution of the American Bar Association which provides, among other things, that one of the objects of the Association shall be to "uphold the honor of the profession of the law." Of what use was it for the Association to prescribe Canons of Ethics for the regulation of the conduct of active practitioners, if it knew that a man on whom the judicial ermine had fallen had yielded to the temptations of avarice and private gain? That a Federal judge drawing his salary of $7,500 a year from the Federal Treasury should take $42,500 a year from an allied club of baseball players was simply to drag the ermine in the mire. Although it might be that impeachment proceedings might not reach him, yet from every bar in this united country there rose up the withering scorn of the profession against the man who had stained its honor. Those who came to deliberate upon that which touches the honor of the profession would go away and hang their heads in shame if they did not rebuke such conduct.

Mr. John Lowell, of Massachusetts, seconded the adoption of the resolution, and Mr. William A. Ketcham, of Indiana, moved that a copy be sent to the Vice-President of the United States to be laid before the senate.

Postponement of Action Urged

Ex-Senator James Hamilton Lewis, of Illinois, then took the floor to urge that no hasty action be taken, but that the resolution be referred to the proper committee, with instructions to serve notice on the judge of the charges against him and to give him an opportunity to reply before he was condemned without a hearing. If anyone had committed acts which should call down on his head opprobrium and condemnation, he would himself ask that he be excoriated. But he could not permit himself, as a member of the bar of Illinois, to vote for the resolution until it had been given due consideration and all the facts had been ascertained. Hasty action might do an injustice more far-reaching than the mere example of ethics which it was the purpose of the author of the resolution, perhaps, to establish. He knew Judge Landis and had differed much with him personally and privately, but he could assure this body that his reputation as a man of probity, above the temptation of being ruled by money, was established.

Apart from that, however, he had seen in the public press that an attempted impeachment proceeding was pending before a committee of the House of Representatives and that a similar charge had been made before a committee of the Senate. He submitted, then, that while he was on trial before two different tribunals, it did not become this honorable body to pass any resolution which would condemn him without a hearing. It might be that the things referred to in the resolution were true, and it might be they were untrue. But those who preached equity and fairness and justice should not violate it by taking a presentation against a judge from the newspapers and upon that sustain a resolution, however high the source from which it emanates, which condemned the man without a trial.

Mr. Ketcham, of Indiana, rose to state that he had written to the Chairman of the Judiciary Committee of the House on the subject and that he had replied that the matter had been before the Sixty-Sixth Congress, which had declined to take any action upon it, and there was nothing before the Sixty-Seventh Congress at all. The suggestion that the resolution should be side-tracked because somebody else was investigating the matter was therefore unsound.

Mr. Lewis replied that the information on which Mr. Ketcham relied did not give assurance that the matter would not be brought up before the Sixty-Seventh Congress.

Mr. Walter George Smith, of Pennsylvania, said the question was whether the Federal judge in question had or had not accepted outside employment at a large compensation. If the charge was not based on facts, then of course the judge should be given an opportunity to be heard. Most of us have no information except that derived from the public prints, but he ventured to say that if any one of us were accused by the newspaper press throughout the length and breadth of the land, he would be quick to deny so broad an accusation. The judge himself, according to newspaper reports, had said that he had accepted a salary as counsel for the baseball clubs. The matter was further referred to a committee of congress and was voted on there, and it was not decided against the judge. Assume that the judge was as pure as pos-

sible, for the purpose of the discussion, then what was the sentiment of the American Bar? Unless the distinguished gentleman from Illinois, with the chivalrous purpose which always distinguished him, could say that the judge had not accepted this outside employment, he was willing to vote for the resolution without referring it to any committee.

Mr. R. D. Robinson, of Illinois, expressed the opinion that the people of Illinois did not approve of such conduct on the part of a judge.

John M. Harlan, of the same state, said that perhaps, unconsciously to itself, the American Bar Association was on trial. There was no doubt whatever that Judge Landis was the national commissioner of the baseball association. And he wished to say that if they were to have any *esprit de corps* as an association, if professional honor and dignity meant anything, they ought to tell the American public whether they countenanced this act.

Mr. Edward Q. Keasbey, of New Jersey, said that there was a rule of the Association that such a resolution should not be sprung without an examination of the facts contained in it or a reference of it to a committee.

The speaker was interrupted by calls for the question to be put, and on the chairman doing so, the resolution was adopted. Immediately thereafter a resolution by Mr. Ketcham, that a copy should be sent to the Vice-President of the Senate and the Speaker of the House of Representatives, was also approved.

Chairman Hughes, of the Committee on Admiralty and Maritime Law, stated the report was in print, everyone had had an opportunity to read it, and he therefore moved its adoption without further comment. The motion carried.

William Draper Lewis then presented the report of the Committee on Drafting of Legislation. He briefly reviewed the work of the special committee since its appointment, and offered a resolution that its report be accepted and approved, that the special committee be discharged, and that the Conference of Commissioners on Uniform State Laws be requested to examine the particular recommendation in the report looking to the possibility of taking care of certain drafting rules by statutory provision.

The Secretary submitted a list of 556 applications for membership. The names had been duly examined and certified by the proper authorities. On motion of R. E. L. Saner, of Texas, they were declared elected.

Administration of Criminal Justice

The sixth session was devoted to the symposium on the "Administration of Criminal Justice." Hampton L. Carson called the meeting to order. Charles S. Whitman of New York was then introduced and delivered his address on "Unenforceable Law."

He prefaced his remarks by saying that Mr. Fosdick had been invited to deliver an address, but could not come, and he had himself consented to speak briefly on the subject which Mr. Fosdick had chosen. As for himself, he would hardly have chosen that particular subject, for the juxtaposition of the two words was very disagreeable to him; he did not believe there was any such thing as "unenforceable law."

At the conclusion of his address Mr. Rosser spoke on the "Illegal Enforcement of Criminal Justice," and Judge Marcus Kavanagh on "The Adjustment of Penalties."

The Chair then recognized Senator Spencer, of Missouri, who stated that he had been told that the grave of the late Chief Justice Salmon P. Chase was unmarked. He had gone out to the cemetery that morning to investigate for himself and had found that with the exception of the footstone, the facts were as reported. The man who lay there had been Governor, Secretary of the Treasury and Chief Justice of the United States. It had often been said that the United States cared nothing about the men who gave their lives to its service. That was untrue, and he moved that the matter be referred to the Executive Committee for such action as it deemed appropriate. The motion was unanimously carried.

Mr. Thomas W. Shelton, chairman, presented the report of the Committee on Uniform Judicial Procedure. He stated that the committee had no action to propose to the Association officially, but wanted it to get in touch with the work the committee had been doing. He suggested that every member of the Bar Association immediately communicate with his senators and representatives, requesting a prompt report of H. R. 2377 from the Committee on Judiciary of the House, and also a prompt report of the same bill introduced by Senator Ernst at the present session of Congress. A majority was assured; it was only necessary for the committees to report.

He further proposed that such State Bar Associations as have not already done so be respectfully requested to create state committees, with a central chairman and members from each congressional district, to co-operate with the committee in carrying out the instructions of the Association; and that these state committees should function by instituting independent campaigns with reference to their senators and representatives, as their judgment dictated. The bill referred to is the one giving the U. S. Supreme Court authority to make rules governing the entire procedure in cases at law.

The report of the committee was adopted and the committee was continued.

Association Thanks Its Hosts

Mr. William O. Hart, of Louisiana, then presented a resolution thanking Cincinnati, "the Queen City of the West," for the hospitality shown the members of the Association during the meeting and for the spirit of good fellowship which it had manifested; Vice Mayor Carl N. Jacobs for his cordial words of welcome, which were more than made good from day to day; the committee of ladies of Cincinnati, headed by Mrs. George Hoadly, for entertainments provided for the ladies attending the meeting of the Association; the managements of the Gibson and Sinton hotels for the splendid accommodations provided; the press for its graphic and complete account of the meetings; the social clubs of the city for opening their doors to the members; the Ohio State Bar Association, the Cincinnati Bar Association, the Montgomery County Bar Association, the Cincinnati Chamber of Commerce, the manager of Keith's Theatre, and the surety companies represented at the meeting for courtesies extended. The resolutions requested the Chairman of the Local Reception Committee to convey the Association's thanks to these and any others who might have been inadvertently omitted, and stated that the members would leave Cincinnati with the feeling that nothing had been left undone to make their stay pleasant and agreeable.

Mr. Hart then presented the following report of nomination of officers for the year 1921-1922:

President, C. A. Severance, St. Paul, Minn.; Treasurer, Frederick E. Wadhams, Albany, N. Y.;

Secretary, W. Thomas Kemp, Baltimore, Md.; members of the Executive Committee: Hugh H. Brown, Tonopah, Nev.; T. C. McClellan, Montgomery, Ala.; John B. Corliss, Detroit, Mich.; William Brosmith, Hartford, Conn.; S. E. Ellsworth, Jamestown, N. D.; Thomas W. Backburn, Omaha, Neb.; Thomas W. Shelton, Norfolk, Va.

The Secretary was instructed to cast one ballot for the Association for the gentlemen named, who were thereupon declared elected. A committee then escorted President-elect Severance to the platform and presented him to the audience. He spoke as follows:

Remarks of President-Elect Severance

"Mr. Chairman, Men and Women of the American Bar Association: I cannot say that I am entirely surprised by the announcement that has just been made, for certain revelations have come from the executive session that have in a way prepared me for it.

"Believe me when I say to you that it is difficult for me to control my emotion. I thank you for the great honor conferred upon me. I appreciate it more than any official position that could be given to me, because it comes from my brethren at the bar with whom I have lived and worked for nearly forty years.

"I am sorry that my dear friend, William Alexander Blount, is not here to present me to you as his successor. He was a lawyer of distinction, a gentleman of the old school, a charming man. I served with him in the Conference of Commissioners on Uniform State Laws, and I served with him on committees in this Association, and I knew him intimately and learned to love and admire him. It was a great loss that we sustained, and it is a dreadful loss to the new administration that we cannot have the benefit of his counsel in carrying forward the duties that devolve upon us during the coming year.

"What is the further pleasure of the Association?"

Mr. Joseph R. Edson, of Washington, D. C., thereupon presented a resolution requesting the Patent Section to advise the Association at its next meeting why it had not appeared before the proper committee of both houses of congress and exerted its best endeavors to secure the passage of the bill for the establishment of a Court of Patent Appeals, as provided for in the bill which had been so frequently, favorably and unanimously approved by the Association. It was referred to the proper committee.

Membership Committee's Report

The report of the Membership Committee was presented at the seventh session, at which Judge George T. Page presided, by Chairman Wadhams. It first outlined the general plan for increasing the membership of the Association which had been approved by the Executive Committee at its meeting in New Orleans, and then continued as follows:

> The possibilities of the organization may be realized when it is considered that under this plan the interest of about 3,075 of the members is directly enlisted in the work of maintaining and increasing the membership of the association, so vital a factor in its life, the committee being composed of 17 former Presidents of the Association, 10 District Directors, 48 State Directors, three Territorial Directors, and about 3,000 County Advisers.
>
> The Membership Committee, in conjunction with the organization provided, under the Constitution and By-Laws, by the General Council and the Local Councils, completely structuralizes the Association throughout our land. An important feature of the Membership Committee is the permanent character of its organization, the value of which can scarcely be overestimated in the development of the Association.
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> The Chairman of the Committee, notwithstanding the fact that the committee has functioned only a few months, is satisfied as to the entire feasibility of the new membership plan and believes that it may be relied upon as a dependable source of a steady and continued growth of the Association.
>
> The Chairman has been very deeply impressed with the splendid spirit of service which has animated the individuals composing the Committee. There has been most enthusiastic co-operation between the various units. There is inspiration to be found in the eagerness with which so many of the members of the Committee took up this service to the Association.
>
> In considering the results this far obtained, the Chairman especially desires to call attention to the fact that there has not been time to effect a complete organization in all of the States. Indeed, the work is not yet fairly under way in several of the larger States.
>
> It is with a feeling of no little satisfaction, therefore, that the Chairman announces that as the result of less than eight months' actual work on the part of the new Membership Committee, there have been secured 3,560 applications for membership. All these applicants have been elected to membership, except a very small number, the applications of whom were received very recently and who will be elected during this annual meeting of the Association. In addition to this, there were elected since the beginning of this fiscal year, before the present Committee began its work, 886 new members, giving the total new members elected this year 4,446.
>
> No attempt is made here to tabulate, for the purposes of comparison, the results obtained by the various states, for the reason that there has been, of necessity, a great inequality in the opportunities offered for securing results, owing to the difference in the length of time during which the membership work has been carried on in the various states. It may be said, however, that most notable results were obtained by the State Director of one of the larger States, who, with his County Advisers, secured no less than 720 new members; another, in a little over two months, secured 375 new members; another, where the population is smaller, secured 340 new members. A far western State contributed no less than 191 new members.
>
> Every State in the Union contributed some new members and applications were also received from the Philippine Islands, the Canal Zone, Porto Rico, and one from an American lawyer temporarily residing in England.

The report was approved unanimously.

Date of Presidential Inauguration.

William L. Putnam, of Massachusetts, presented the report of the Committee on Change of Date of the Presidential Inauguration. It had seemed to the committee that the Association should go on record, leaving to congress the details of working out exactly the date when the new President should be inaugurated and the new congress convene. These seemed matters of detail which should be studied by a committee having power to summon witnesses. However, the committee felt that it ought to make very clear that the members, as lawyers, appreciated the great danger in having the old congress meet right after election, when there might be many lame ducks present. The committee had prepared a short resolution practically along the lines of that of last year, but a little more explicit.

He then read the resolution, which was that congress should come into being immediately upon its election and that the ensuing session should be a session of the new and not the old congress; that the Electors should meet at the earliest practicable moment to cast their votes for President and Vice-President; that congress should meet at the earliest practicable moment to count the votes for President and Vice-

President; and that these officials should be inaugurated thereafter without any unnecessary lapse of time.

Mr. Wayne Parker, of New Jersey, stated that in 1910 or 1911, when he was chairman of the Judiciary Committee of the House of Representatives, they had taken up the subject. There was a great deal of sentiment at that time in favor of making the date for inaugurating the President April 30, that upon which Washington was inaugurated. Washington was counted in by the new congress, as there was no previous congress. If there had been any dispute, it would have been settled by the members of the congress who were elected with him. The resolution provided for that in future, and he considered it a point of great importance. The old House of Federalists nearly gave us Aaron Burr instead of Thomas Jefferson as Vice-President. The Tilden-Hayes controversy was still fresh in public recollection. It would be better to do anything rather than have uncertainty and leave to the opposite party the selection or determination of who was elected. He regretted that the resolution was so strong in details, but there was enough merit in it to entitle it to support.

The resolution was thereupon adopted.

James D. Andrews, chairman, presented the report of the Committee on the Classification and Restatement of Law, which he characterized as "simply one of progress." It was unanimously adopted and the committee was continued with the instructions contained in that report.

Mr. Everett P. Wheeler here presented a resolution that there be printed under the direction of the Secretary of the Association 5,000 copies of the address of Hon. James M. Beck, to be distributed as the proper committee might direct. Adopted.

Report of Special Committee on Law of Aviation

Next came the report of the Committee on Aviation, presented by Charles A. Boston, of New York, chairman. He said he represented the youngest infant of the American Bar Association, the committee having been appointed by the Executive Committee after the St. Louis meeting. In 1911 Judge Simeon E. Baldwin, with prophetic instinct, had asked the Association to take action on the law of the subject. The proposal had been referred to the Committee on Jurisprudence and Law Reform, which reported that the matter was not sufficiently urgent then to call for action. There, save for the appointment of the present committee, the matter had rested. In the meantime there had been a great world war, and the development of commercial questions, the provisions of the League of Nations as to aviation, the Air Convention formulated by the nations participating in that League, and applicable in many of its features to this country, although not yet signed by us—all these had emphasized the importance of the subject.

The United States is pitifully behind some of the smaller nations in its laws on aeronautics. Substantially speaking, there are no such laws in the United States. There are certain state and federal laws and local ordinances, but we are now in the humiliating position that, under the air convention that has been signed by so many nations, we are technically under a boycott, although it has not yet been put in operation. Among other things, that convention provides that the craft of non-signatory nations shall not be permitted to fly over the borders of signatory nations, except under temporary and peculiar conditions. England has now a complete set of laws regulating flight in that kingdom. Canada also has an Air Board and an Air Force and an air navigation law, and it is only by sufferance that any flyer from this country can cross the Canadian border today, because there is no power in this country to deal with the simple regulations of air navigation across the border.

No attention need be paid to the flight of government aircraft. The government had already prescribed numerous statutory and other regulations with respect to them. But so far as civil, commercial aircraft was concerned, there was never a greater need for the guidance of the law. All the investigations made by the committee showed that it was the law that was defective and not the progress of the art that was at fault. Those interested in the subject believed that if there were adequate laws, there would be a rapid develoment of commercial aircraft as a means of local, intrastate and international transportation. But capital would not invest under present conditions and insurance companies would not insure. The sooner we appreciated that the fundamental factor was not the mechanical but the legal one, the better it would be for aviation.

There were two embarrassments in dealing properly with the legal factor. The first was the theory that the owner of land has "no ceiling to his dome," that he owns clear up to the sky, and that the exercise of eminent domain will be necessary to clear the way. The committee did not think that point should be conceded by any means. The committee's suggestions were all tentative, but it held the view that it was on the property owner to demonstrate that he had such a private property in the air; that is, that he has such an interest in the air at a considerable height above the surface that eminent domain was necessary to deal with that right.

The other embarrassment was the dual nature of the government. Gentlemen interested in the subject might affirm that the government has the unlimited power and the exclusive power to legislate as to air flight, but that did not make it so. You could not get past the Constitution and you could not enact any law you wished simply by shutting your eyes to it. Although there are undoubted powers that might be exerted by congress, they are limited in extent. The tentative judgment of the committee was that the ultimate solution of the problem was one that will put the United States on a par with other nations—a constitutional amendment which would extend the power of congress to legislate on the subject. Major Johnson, representing the legal service of the United States Army, had reached the same conclusion. That gentleman had proposed a tentative amendment to the Constitution, but a reading of it suggested that it was framed on present concepts of flight and its possibilities, and was so limited that it had no broad vision of the future. The committee thought if there were such an amendment, it should be of the broadest possible scope. It had no suggestion to make as to the form of law or constitutional amendment.

Chairman Boston then read certain resolutions proposed in the committee report. These requested the members of the Association to give their attention to the fundamental legal problems involved in a proper solution of the demands of aeronautics; provided that copies of the report should be placed in certain official hands and one thousand additional copies be made available for distribution to those interested in the sub-

ject; expressed the hope that in the enactment of any legislation by congress the most careful preliminary consideration would be given to the constitutional features of the plan, to the end that it might be determined whether the proper development and regulation of aeronautics does not require a constitutional amendment conferring complete jurisdiction upon the United States, through its appropriate departments, instead of attempting to adopt devices of questional constitutionality to make existing national powers apply to this new branch of human activity; and recommended that, meanwhile, all national legislation studiedly observe the existing constitutional limitations and preserve without assault the existing division of powers between the United States and the states of the Union, and that all constitutional state legislation involving matters not purely of local application be made uniform.

He submitted the report and asked that the committee be continued as a special committee.

Discussion of Aviation Committee's Report

Mr. Wayne Parker, of New Jersey, complimented the committee on the good judgment with which its report and recommendations had been drawn. The most important provision, in his opinion, was that no legislation should infringe upon the general powers of the states. The subject, however, was not the only one which involved these considerations. It was only one of a host of questions that had come up before this generation because of the wondrous progress in communication, not only by wire, by land and by sea, but through the air and through ether. He thought the recommendations were in excellent form, but felt consideration of the subject should go further.

Mr. George C. Bogert, of New York, seconded the recommendations presented by Mr. Boston. The Conference of Commissioners on Uniform State Laws had honored him with the chairmanship of this subject, and he felt that all should work in harmony with respect to state and federal laws on aeronautics.

Mr. William V. Rooker, of Indiana, was opposed to the report. At the Conference of Bar Association Delegates in Boston he had suggested that the jurisdiction over aerial navigation would properly lie in admiralty. A resolution to that effect was adopted unanimously, and he was made chairman of a committee to pursue further investigation, which committee reported to the Conference of Delegates at St. Louis. The present report was not constructive. In saying that we needed a constitutional amendment, it said that we needed from ten to twenty years' delay on one of the most momentous questions engaging the attention of the American people. He challenged the view that there was no authority for admiralty jurisdiction. There were bills pending in congress to adopt that principle—bills written by men whose fidelity to the Constitution was as fixed as that of the men who wrote the report.

They had heard a good deal about the old maxim of a man who owns the surface having his ownership extended from the middle of the earth 'way up to heaven. It was humiliating that such a thing should have been presented to an intelligent audience—that cardinal principle of the geocentric system of the universe. Gentlemen came before the American Bar Association and asked that it adopt a resolution based on the proposition that the world was flat. You could not fix a cornerstone or a boundary line in the ocean or in the air. Hence you could not set off to any individual his part of either the ocean or the air. It followed that both the ocean and the air were common for the use and benefit of all forms of life.

He offered an amendment to the effect that it was the sense of the American Bar Association that jurisdiction of aerial communication would properly lie in admiralty, with such reservation in favor of the common law as the common law was competent to give; that aerial communication was defined to include transmission through the atmosphere of all mechanical devices and of all forms of written and spoken words; that a copy of the resolution be transmitted to congress, with a tender of the Association's services to aid in the preparation of a bill, and that a committee of fifteen be appointed by the President to give such assistance as might be required.

Five bills had been introduced in congress lodging the jurisdiction of cases of this sort in the admiralty court, and they were going to pass. He did not believe they should humiliate themselves by telling congress that it was going to do that which was constitutionally impossible. He concluded by moving the passage of the substitute proposal, which motion was seconded.

Mr. Holmes, of North Dakota, thought it would do a great injustice to the committee if the substitute were adopted. The committee report simply asked the members as a body of lawyers to request congress, before acting upon the subject, to inquire into the intricate matters involved fully and to determine specifically what kind of legislation would best cover the situation.

Opposes Committee Recommendation.

Mr. Jefferson Davis, of California, regretted that he could not agree with the committee's recommendation. The recommendation as to a constitutional amendment was diametrically opposed to the recommendation of the committee of the Conference of Bar Association delegates and to the report of the National Advisory Committee on Aeronautics, which has endorsed three bills now pending in congress, bringing this vital subject under the maritime clause of the Constitution.

His opposition to the resolution was based on the very language used in the committee's report, declaring that the assumption of the principle of absolute and exclusive private property in the air should not be supinely yielded, but challenged, discussed and debated, and yielded only to the extent that the private owner could demonstrate according to the accepted and tested principles of jurisprudence that the claim was an essential part of his right of private property. Did not the recommendation of the special committee in favor of a constitutional amendment constitute a yielding on this important question? The theory of the necessity of such an amendment was founded solely on the premise that the air was owned absolutely by the surface owner and that all flight over such air space constituted trespass.

This view of space ownership came from too little and narrow an interpretation of the common law maxim, "Cujus est solum ejus est usque ad coelum." A careful examination of the authorities would show that this was not law, but merely a theory which had come down to us from mediæval days, because there had never until recently been any occasion to distinguish between applications which might be drawn from it. It was a maxim relating to tenancy and not sovereign rights. The only rights in space which the courts had seen fit to protect had been rights in space immediately adjacent to and connected with the surface. There were no authorities that it was wrong

to interfere with the space over a man's land when the passage was at such a height that he was not affected in the slightest degree.

The German civil code provides that the owner cannot prohibit interferences which take place at such a height or depth that he has no interest in their prevention. The codes of all countries treat the land owner's property in the space above his land as subject to a right of passage by aircraft. Statutes similar to those enacted by Great Britain, France and Germany also exist in other countries commonly classed as great powers. But America, from whose creative genius the aeroplane sprang, was asked to ignore the natural evolution of the law of the aeroplane as developed in other countries and turn its attention to retrogressive legislation.

He offered as a constructive suggestion the recommendation of Professor Bogert, an associate member of the committee, who in his brief on "Problems of Aviation Law," recommended to the senate the ratification of the International Air Convention. The basic principle of that convention, that of the sovereignty in each nation over the air space above its territory, was surely acceptable to the United States. If there were any doubt as to whether the federal government has jurisdiction over the air space, it would be instantly dissipated by the ratification of that convention and the passage of legislation pursuant to the terms of the treaty. The federal government has exclusive power to make treaties with foreign governments, and the case of the State vs. Holland, 40 Sup. Ct. 382 (1920) decided that where the execution of such a treaty requires federal legislation, such legislation will be upheld, even though it interferes with the internal affairs of the state, but not otherwise subject to national control.

Mr. MacCracken, of Illinois, said the report was a valuable contribution as showing the absolute necessity for some uniform regulation of the subject of aviation, which means of course national legislation on the subject. He did not interpret the report as advising the constitutional amendment that Major Johnson had recommended. The chief fallacy of that gentleman's report was in its recommendation that the whole country be put to the loss of time and to the overwhelming cost of securing an amendment to the Constitution, when it was obvious that such an amendment was utterly unnecessary.

Mr. Charles V. Imlay, of Washington, D. C., said that a careful reading of the documents on the subject indicated that the report was the most practical in its offered solution of any that had been made. It planted its feet upon propositions that were demonstrable. If we proceeded upon those propositions, if we asked congress now to legislate upon those matters that are clearly within its delegated powers, and the states to legislate upon those matters that are clearly within their reserve powers, then we were proceeding on something we are sure of. If in the process the Supreme Court were to say that the national government had plenary jurisdiction, he was sure all would willingly accept it.

Mr. Massie, of the District of Columbia, commenting on the claim that jurisdiction over aeronautics lay in admiralty, said there was not a lawyer who did not know that when anyone came to deal with the jurisdiction of admiralty, his starting point was always bound to be historical, and that there was not the faintest likelihood of any court, Supreme or otherwise, departing upon purely scientific analogy from the historic doctrine that admiralty means admiralty—navigation as it is understood by the human race at the time those words were put into the instrument. To discuss the point from any other standpoint was simply to embark in the realms of pure fancy.

Mr. MacCracken again earnestly urged the defeat of the substitute and the adoption of the report presented by the committee. The country could not build up a national army of defense unless it had the active support of commercial aviation. It could shirk the double problem, commercial and patriotic.

Chairman Boston closed the debate. The members of the committee had sought information from every available source. They had listened to every expression of legal views. They had even placed a footnote at the bottom of the first page of their report stating that the conclusions were not to be taken as positive statements, but as expressions of view tentatively advanced.

Yet the committee had not been given credit for the slightest caution. It had not even asked the American Bar Association to express any opinion on any subject. The trouble with some people who had attempted to interpret the report was they had not read it with an understanding mind. It merely pointed out the dangers and suggestions that should be studied so that the Association should not be improvidently committed to a false position.

No reflection had been intended on Congress or the Supreme Court by the resolutions proposed. The reason that the word of caution with regard to constitutional limitations had been inserted was that, so far as the chairman had been able to ascertain, it appeared to him individually that every bill now pending before congress which attempted to deal with flight exceeded the constitutional limitations of power. All that the committee said was that it trusted that the serious questions involved would be carefully looked into and considered.

On vote the substitute was defeated, whereupon Mr. Homer Albers, of Massachusetts, offered a substitute urging Congress promptly to enact such laws to regulate aeronautics and communications through the air as are within its constitutional powers. The substitute was seconded, but on vote was lost.

Mr. MacCracken thereupon offered a resolution receiving the report of the committee on the law of aviation with thanks for its preparation; instructing the President of the Association to appoint a new committee of five members, and to invite from any clubs or societies interested in the subject of aviation the appointment of a similar committee of five members of practical experience in the science of aeronautics; the two committtees to compose a joint committee with power to select a chairman and to make report as to what legislation is needed, and to present appropriate drafts of bills for introduction in congress.

Mr. Boston made a point of order that it was not in accord with by-laws of the Association that one of its committees should be composed of men not amenable to its discipline. The chair sustained the point and proceeded to put the main question. The report of the committee was thereupon adopted.

Mr. Cahill, of Michigan, offered a resolution expressing the sense of the Association that succeeding annual meetings be held in some city or cities with either a higher altitude or with a latitude and longitude more closely approximating the so-called north or the magnetic pole. The resolution was referred to the Executive Committee.

SECTIONS AND ALLIED BODIES

Lively Debates and Important Conclusions in Sessions of Subsidiaries Charged with Providing "Grist" for the Association—What Commissioners on Uniform State Laws Did—Association of Attorneys-General

Conference of Bar Association Delegates

THE Conference of Bar Association Delegates, Stiles W. Burr of Minnesota presiding as Chairman, listened to and approved the report of the Secretary, Julius Henry Cohen of New York. Mr. Elihu Root was then called on to speak, and he made a brief talk in which he dwelt on the particular importance of the Conference as an institution for crystallizing and expressing informed opinion.

Judge Clarence N. Goodwin of Chicago submitted a report on the "Matter of State Bar Organization" which gave an account of the progress that had been made in that field. It was approved and submitted to the local and State Bar Associations. The committee was continued.

The conference declined to reconsider a resolution passed at the last session, recommending to the various State and Local Bar Associations, for adoption in their States by appropriate legislation, the definition of the practice of law contained in the report of the Special Committee. The point was made that the definition contained in that report was conflicting and not precise.

The call of the roll of states showed a very large attendance from State and Local Bar Associations, and the brief talks given by the delegates from these organizations were full of interest. They told what their associations had been doing in respect to legislation, professional ethics and various other subjects. The amount of the activity thus summarized was really remarkable. It was evident that the State Bar Associations are becoming more and more active in the field of their responsibilities.

The paper by William D. Guthrie on "The Duty and Responsibility of the Bar in the selection of the Judiciary" was considered read, in the absence of Mr. Guthrie, and ordered printed in the regular proceedings. Mr. Amos W. Miller, of Chicago, former President of the Chicago Bar Association, then gave a concise account of the recent judicial election in Chicago and of the part which the Chicago Bar Association took in it. A resolution was adopted recommending to State and Local Bar Associations that they give attention to the work of the Chicago, New York, Detroit, St. Louis and Kansas City Bar Associations in securing the nomination and election of competent judges.

The third session was devoted to a conference on professional ethics with the Committee on Professional Ethics and Grievances of the American Bar Association. It was presided over by Mr. Harriman, Chairman of the Committee. He first called attention to the fact that the Secretary of the Treasury had designated two gentlemen to represent the Treasury Department at the meeting, for the purpose of enlisting the assistance of the Bar Associations of the country in the investigation of the character and qualifications of agents and attorneys who apply to represent claims before the government. The "Treasury Bar" now has a roll of some 8,000 names.

After a considerable discussion of the respective functions discharged by lawyers and experts before the department, and a statement by the Chairman that, of course, the Conference could only make recommendations to the associations, a resolution was adopted urging such co-operation as far as possible. The resolutions as originally offered, however, were amended by a statement that the Conference regard the giving of legal advice concerning the income tax as the practice of law.

Mr. Einar Chrystie, representing the Association of the Bar of the City of New York, told about the work of the Grievance Committee of that organization in the disciplining of attorneys. Mr. Chrystie stated that in order to get such work effectively done there must be committees made up of men who are able and willing to work, they must be free from political entanglement, and they must be willing to devote the requisite amount of time to investigating complaints that come before them. The next important thing is to establish co-operation with the court that has the disciplining of attorneys in charge, and then the co-operation of the Bar must be secured. It is necessary to get away from the idea that brotherly love among attorneys prevents them from telling about an erring brother.

After Mr. Chrystie had concluded his remarks Mr. Charles A. Boston told what the New York County Lawyers' Association had done along the same line. At the conclusion of the discussion a resolution was adopted that the Conference welcomed the co-operation of the Committee on Professional Ethics of the American Bar Association, and recommended that those States which had not yet adopted the canons of ethics should proceed to adopt them, that each State and Local Bar Association be urged to aid in the maintenance of the high standard of professional conduct contained in the canons and, further, that the subject be made a special order of business for discussion at the annual meeting of the association.

A resolution was also adopted by which the Conference recorded its deep appreciation of the invaluable services rendered by Julius Henry Cohen as Secretary since its organization, and its regret that he felt it impossible to continue longer to carry the burden of the office.

Proceedings of the Patent Section

The principal matter coming before the meeting of the Patent Section was the preliminary draft of a new Federal Trade-Mark Act, prepared by a committee of which Edward S. Rogers, of Chicago, is chairman. The proposed bill contemplates a complete revision of the Federal Trade-Mark Stat-

utes. The principal features of the bill were explained by Mr. Rogers and were fully discussed by the members present. Upon motion of Mr. Rogers the bill was referred to the following committee appointed by the chairman of the section: Edward S. Rogers, Chicago, Chairman; Harry D. Nims, New York; James T. Newton, Washington, D. C.; Melville Church, Washington, D. C.; W. L. Symons, Washington, D. C.; James A. Carr, St. Louis; A. C. Paul, Minneapolis.

The committee was requested to make a complete study of the proposed bill and to report the same to the Patent Section at its meeting in 1922.

Copies of the bill, as it now stands, can be obtained from the chairman, and the committee will welcome criticisms and suggestions from members of the Bar Association,

The Patent Section also passed a resolution that was later adopted by the Bar Association, recommending for immediate passage H. R. No. 7077, increasing the salaries of the employees of the Patent Office, and obtaining the money for such increase by increasing from $15 to $20 the filing fee for applications for patents.

Section of Criminal Law

The Section of Criminal Law, which is one of the newest sections of the Association, held two interesting meetings. Judge Ira E. Robinson was in the chair. Mr. Charles H. Elston, assistant Prosecuting Attorney of Cincinnati, delivered an address of welcome, which was made the text and point of departure for a discussion of the indeterminate sentence and other methods of dealing with the criminal.

The discussion was participated in by Col. J. H. Wigmore, of Illinois, who insisted on a more scientific ascertainment of the facts as a basis for a really scientific treatment of the criminal; by Mr. W. O. Hart, of Louisiana, who told of some unfortunate results of the indeterminate sentence law of that state; by Secretary Abbott, of Pennsylvania, who, in reply to the statement of the Assistant Prosecuting Attorney that Ohio had abolished its indeterminate sentence act, gave some records from his own state showing a fairly successful operation; by Mr. Buchanan, of Pennsylvania, and by Judge Catharine Sellers of Washington.

Various reforms in criminal procedure were discussed by Col. Wigmore, the Chairman, and Mrs. Annette Abbott Adams. Mr. Milton Carlson, of Los Angeles, Calif., examiner and photographer of questioned documents, made an interesting talk in which he pointed out the possibility of a forgery of fingerprints and also suggested, contrary to the general opinion, that the fingerprints of two different persons might possibly be alike.

At the evening session the new officers were elected, and Judge Floyd E. Thompson, of Illinois, President of the section for the coming year, made a brief address in which he suggested that more reform was necessary in the human beings who administered the criminal law than in the procedure itself. The one fundamental thing that all ought to attempt to do was to instill in the minds of the American people respect for the law, and if that were accomplished in a missionary or any other way, much of the problem of reforming criminal procedure and handling of the convict after conviction would have been solved.

Hon. Edwin W. Sims of Chicago, former United States District Attorney, read his paper on "Speedy Justice in Criminal Cases," in which he gave an account of the workings of the Chicago Crime Commission. In the absence of Hon. James R. Clark, United States District Attorney for Cincinnati, his paper on "Should Verdicts Be Unanimous in Criminal Cases?" was read by Mr. Morrow, Assistant District Attorney. Commenting on these papers the Chairman commended their tendency to retain at least something of the old methods.

Judge Carter of Illinois made a brief talk in which he said that the trouble with most prosecuting organizations was that they were looking for a victim rather than the man who is guilty. Mr. Buchanan also spoke briefly, after which Secretary Abbott stated that a resolution had been passed by the Law Committee of the United Business Men's Association in Philadelphia, asking the mayor to institute a similar crime commission to that which existed in Chicago. He believed that a prompt enforcement of the law would be the best means of bringing the criminal to punishment and act as the greatest deterrent to crime. Judge Briscoe spoke of conditions in Maryland, and the Chairman closed the discusison.

Judicial Section

Judge Charles A. Woods, of South Carolina, presided at the two meetings of the Judicial Section. He stated that only one project had been undertaken by the Chairman of the Executive Committee since the last meeting, and that was to do what it could to help secure the passage of the Bill "to authorize the Supreme Court to prescribe forms, and rules and generally to regulate pleading, procedure and practice of the common law side of the Federal Courts." Circular letters sent to the appellate judges and federal district judges had shown an overwhelming sentiment in favor of the reform. The sole purpose of the Executive Committee, of course, was to aid the Committee on Uniform Judicial Procedure in pushing this legislation.

Judge Woods also submitted, with the approval of the Executive Committee, what was termed "A Warning to the American People:"

> One other plain statement should be made. The prevalence of lawlessness in all its forms and among all classes is alarming to all who care for the welfare of their country and humanity. The Congress and State Legislatures are trying to suppress it by increasing the number of courts and policemen. The Judicial Section of the American Bar Association, venturing to speak for all the judges, wishes to express this warning to the American people: Reverence for law and enforcement of law depend upon the ideals and customs of those who occupy the vantage ground of life in business and society. The people of the United States by solemn constitutional and statutory enactment, have undertaken to suppress the age-long evil of the liquor traffic. When, for the gratification of their appetites, or the promotion of their interests, lawyers, bankers, great merchants and manufacturers, and social leaders both men and women disobey and scoff at this law, or any other law, they are aiding the cause of anarchy and promoting mob violence, robbery

and homicide. They are sowing dragon's teeth, and they need not be surprised when they find that no judicial or police authority can save our country or humanity from reaping the harvest.

The report was adopted.

A committee was appointed by the Chairman to prepare a memorial on the death of the late Chairman, Judge William C. Hook, and present it to the section next year.

The next session was a joint meeting of the Judicial Section of the American Bar Association and the Ohio State Bar Association. After the report of the Committee on Nominations for officers had been received and adopted, the Chair introduced Chief Justice Taft of the United States Supreme Court, who delivered an address, which is printed elsewhere in this issue.

Public Utilities Section

Mr. Bentley W. Warren, Chairman of the Public Utilities Section, called the meeting to order and made a brief address in which he stated that it seemed that all might congratulate themselves that the utilities seemed to be beginning to regain the reputation enjoyed before the war as a stable and reliable investment and as a necessary industry in the community as a whole.

This was followed by the report of Secretary Armstrong who stated, among other things, that in the field of public utility law there had not been much that was strikingly new during the past year. Various courts had qualified and renewed their expression of the law already made.

Mr. Joseph Wilby, of Ohio, then read his paper on "Public Utility Regulation in Ohio, With Special Reference to Street Railroads." The paper provoked a lengthy discussion.

At the afternoon session a paper by Mr. LeRoy T. Harkness, of New York, entitled "Transit Tendencies in New York City," was read by the Secretary, Mr. Harkness finding it impossible to be present. The Chairman then read the list of questions submitted for consideration, which was followed by a discussion by various members of the Section.

At the evening session a paper on the "Legal and Practical Aspects of Cooperative Uses of Carrier's Facilities" was read by Mr. A. G. Gutheim, of the District of Columbia, followed by one on "Developing Port Facilities by Interstate Compact and Agencies," by Julius Henry Cohen.

Section of Legal Education

Hon. Elihu Root presided at two interesting meetings of the Section of Legal Education at which the principal subject of discussion was the report of the Special Committee appointed to make recommendations of action to create conditions which would strengthen the character and improve the efficiency of those admitted to the practice of law.

Mr. Root, who was chairman of this committee, pointed out that eight and a half years ago the American Bar Association Committee had asked the Carnegie Foundation to make an intensive study of legal education in this country. That work had just been completed and the Special Committee of the Section had had the benefit of that report. He stated that the time had come to have done with desultory discussion and bring the thing to definite conclusions, if they were to perform the duty of this generation in this critical period of change.

At the second session of the section Hon. John B. Sanborn, the Secretary, was called to the chair and Mr. Root read the report of the Special Committee, the fundamental principles of which were that there should be two years of preparatory work in college as a condition of entrance to a law school and a three years' course in the law school. He thereupon moved the adoption of the report and the motion was seconded by Chief Justice William H. Taft.

The Chief Justice thought the committee should be thanked for the conscientious way in which the members had devoted themselves to their task. Alluding to the argument that Abraham Lincoln did not have the benefit of such education as was there recommended, he said that there were no doubt exceptions, but that the provisions adopted should be for the benefit of all. It was not a question of the personal ambition, or the personal coming to the front of the individual, but of saving society from the incompetent, the uneducated and the careless, ignorant members of the bar who are intrusted with the fortunes and the lives of the public. The report, it seemed to him, most admirably pointed to the necessity of the restrictions introduced.

The debate followed the lines of that on the floor of the Association itself, which is printed somewhat at length in the regular proceedings, and was participated in by Mr. Charles F. Carusi of Washington, D. C., Mr. Edward T. Lee of Chicago, and others.

Mr. John E. Hannigan of Boston, Mass., moved to amend the report by inserting in place of the words, "at least two years in college," the words, "at least a diploma from a recognized high school or the equivalent thereof." Mr. Homer Albers of Boston suggested that the words, "or approved preparatory school" should be substituted for the words, "or the equivalent thereof" in the amendment just mentioned.

The proposal caused some discussion, during which Mr. William Hutchinson of Kansas rose to present to the section the unanimous opinion of the entire State Bar Association and of the Supreme Court of his State in favor of the principles of the report. On vote the amendment was tabled and the resolution as originally presented was adopted.

National Conference of Commissioners on Uniform State Laws

The thirty-first annual meeting of the National Conference of Commissioners on Uniform State Laws, held in Cincinnati from August 24 to 29, was the largest attended of any of these conferences, not only in the number of Commissioners present, but in states represented.

There were forty-one jurisdictions in all represented—thirty-one states and the District of Columbia and Porto Rico. Seventy-one Commissioners were in attendance.

Judge Henry Stockbridge of Maryland, Mr. E. A. Gilmore of Wisconsin and Mr. W. O. Hart were re-elected, respectively, President, Secretary and Treasurer. Mr. John R. Hardin of New Jersey was elected Vice-President, and the following members of the

Executive Committee were appointed by the President: Mr. Nathan Wm. MacChesney of Illinois, Chairman; Mr. E. C. Massie of Virginia, Mr. Geo. B. Young of Vermont, Mr. Geo. E. Beers of Connecticut, and Mr. J. Hansell Merrill of Georgia.

While the conference, with the care and deliberation always exercised by it, completed the consideration of no Uniform Act this year, considerable work was done on pending measures.

The eighth Draft of a Uniform Corporation Act was considered to the extent of approving the plan of the act, it having been fully explained to the Commissioners by Mr. A. W. Meachem, Jr., of Baltimore, draftsman of the act, and by Mr. Chas. T. Terry, Chairman of the committee in charge.

The Uniform Fiduciaries Act was considered in full, section by section, some amendments adopted and other amendments referred to the committee on Commercial Law for further consideration.

The amendments to the Uniform Sales Act and the Uniform Warehouse Act were carefully considered, as was the second tentative draft of the Uniform Declaratory Judgments Act, and all of these were recommitted, to be brought up again in 1922.

The first tentative draft of the Uniform Mortgage Act was considered, and the policy of the act that mortgage foreclosures should be by publication, instead of by action, was adopted by the conference and the act recommitted.

An entirely new subject with the conference was the first draft of a Uniform Aviation Act, and this after careful consideration was also recommitted.

The report of the committee on Compacts Between States, being a complete monograph on the question, was briefly considered, the work of the committee approved to date, and the committee continued.

Probably the most interesting subject considered was the first tentative draft of an Act Relating to the Status and Protection of Illegitimate Children, presented to the conference by the committee in charge thereof, through Professor Ernst Freund of Chicago, Chairman.

From the very beginning the act provoked discussion from every angle, the most important of which was the attempt to define the respective rights of legitimate and illegitimate children in the estate of their deceased fathers. Although the subject was discussed at several sessions, it was passed over to next year and the committee was instructed carefully to consider this point in the meantime.

During the session the Commissioners were addressed by Mrs. Catherine Waugh McCulloch, Chairman of the Legislation Committee of the National League of Women Voters, and so impressed were the Commissioners by what she said that a resolution was at once adopted for the creation of a Special Committee to prepare and present in 1922 the draft of a Uniform Act for the Joint Guardianship by Parents of Their Children.

The Committee on Scope and Program presented but one recommendation, and that was for the creation of a special committee on a Uniform Law regarding requisition of persons charged with crime.

Through a committee of which Mr. Walter G. Smith of Pennsylvania was chairman, suitable resolutions out of respect to the memory of the late Wm. A. Blount of Florida, a Commissioner for many years and three times elected President of the conference, were adopted, after appropriate remarks were made by Mr. Peter W. Meldrim of Georgia, Mr. W. O. Hart of Louisiana, Mr. L. C. Massey of Florida, and Judge Stockbridge, President of the conference.

The conference closed by the singing of an original "Anthem" as follows:

There are laws which need amendment,
There are laws which make us sigh;
There are laws whose obvious intendment
Is to make us permanently dry;
There are laws whose legislative craftsmen
Have been quite devoid of legal sense;
But the laws of which we are the draftsmen
Make the rest look like thirty cents!

This was writen by Col. J. H. Wigmore of Illinois and sung by all, followed by "America," with the Colonel at the piano.

National Association of Attorneys-General

The National Association of Attorneys-General was presided over by Vice-President Byron S. Payne of Pierre, S. D., who acted in the absence of President Smith. The following Attorneys-General were present at the opening session: Clifford L. Hilton, of Minnesota; Byron S. Payne, of South Dakota; Samuel M. Wolf, of South Carolina; Ulysses S. Lesh, of Indiana; Harry S. Bowman, of New Mexico; Jesse W. Barrett, of Missouri; William J. Morgan, of Wisconsin; Wellington D. Rankin, of Montana; Clarence A. Davis, of Nebraska; Frank Roberson, of Mississippi; Ransford W. Shaw, of Maine.

Attorney-General Utley of Arkansas was not able to be present, but his paper on "The Initiative and Referendum in Arkansas" was read by Attorney-General Rankin of Montana. Attorney-General John G. Price of Ohio delivered an address of welcome, which was responded to by Attorney-General Wolf of South Carolina. Attorney-General Ulysses S. Lesh of Indiana then delivered his address on "The Attorney-General's Office and Law Enforcement."

Attorney-General Hilton moved that a committee of three be appointed to confer with a committee from the Conference on Uniform State Laws upon the question of uniform methods of procedure in extradition. The motion was carried.

Attorney-General Roberson of Mississippi, then presented his paper on "Common Law Certiorari in Rate Litigation." A discussion on "Open Price Associations" followed, led by Attorney-General Jesse W. Barrett of Missouri.

Attorney-General Morgan of Wisconsin offered a resolution that each member of the Association furnish to such Attorneys-General as signify their desire to have it, a statement of their plans and experiences in enforcing anti-trust statutes. The motion was carried.

Attorney-General Shaw of Maine made an address on the subject of the "Federal Water Power Law," after which an amendment to the constitution of the body was proposed and adopted, providing that when an Attorney-General of any state is unable to attend in person any meeting, he may in writing appoint a member of his staff to appear and represent his state and have the full privileges of an active member of the Association.

REVIEW OF RECENT SUPREME COURT DECISIONS

Question of Agency in Settlement of Indian Claims—Liability of Director-General of Railroads During Government Operation—Interpretation of Uniform Bill of Lading Act—Exemption of Federal Instrumentalities from Special Local Assessments—Municipal Grants

By Edgar Bronson Tolman

Agency—Contracts, Quantum Meruit

Heirs of Garland v. Choctaw Nation, Adv. Ops., p. 702.

The Choctaw Nation had a claim against the United States for the value of lands east of the Mississippi river ceded to the United States under certain treaties. The nation, in 1853, appointed a delegation consisting of Garland and four other members of the tribe, with authority to settle all unsettled business between the nation and the United States and agreed to pay the delegates, naming them, for their services in negotiating the settlement and for other services at Washington, 20 per cent of the amount realized. The result of the long continued and valuable services of the delegation was the recovery as a judgment in the court of claims for $2,858,789.62, payment of which was decreed by an Act of Congress in 1888.

Garland died, and in 1888 the nation appointed LeFlore and McCurtain agents of the nation to make requisition on the United States for the amount due Garland and the other delegates, $638,919.43, being 20 per cent of the judgment of the court of claims. LeFlore and McCurtain collected this amount and in 1889 paid the heirs of Garland $43,943.20, but refused to pay the balance due, amounting to $115,786.65.

The nation never denied the indebtedness, but recognized it and authorized payment by an act passed by its general council in 1897 which was vetoed because it would exhaust the treasury and force the closing of the Choctaw schools.

The estate had no power to sue the nation until authorized by an act of Congress. Such an act was passed in 1908 and pursuant to its terms the petition in the instant case was filed in the court of claims.

The court of claims held that LeFlore and McCurtain were not the agents of the Choctaw Nation for whose conduct the nation was responsible, but that they were the successors to the original delegation, standing in such relation to the nation and the other members of the delegation that the payment made to them was an acquittance to the nation.

From the judgment of the court of claims dismissing the petition the heirs of Garland appealed to the Supreme Court of the United States. The opinion of the case was delivered by Mr. Justice McKenna.

On the pivotal point of the case the learned Justice said:

> As we have seen, there was a delegation constituted, and Garland was a member of it. . . . Delegates, however, died and others were appointed in like generality, and finally there was a concentration in LeFlore and McCurtain, and, the national council reciting that the delegates preceding LeFlore and McCurtain had recovered from the United States $2,858,798.62, and that the delegates were entitled to 20 per cent of the amount, that percentage was appropriated out of the fund and directed to be paid to LeFlore and McCurtain as delegates and successors of the delegates of 1853, "to enable them (LeFlore and McCurtain) to pay the expenses and discharge the obligation in the prosecution of said claim (the claim of the nation against the United States), and to settle with the respective distributees of said delegation. . . ."
>
> The enactment of 1888 was a deputation to LeFlore and McCurtain to collect and disburse the congressional appropriation, and they became for that purpose the agents of the nation, not the agents of the delegation, and it was the first deputation of that power. By a prior enactment the payments made to the delegation were from the national treasury, and another (1867) provided for such payment. In other words, until the enactment of February 25, 1888, the control of the appropriation was in the nation, and payments out of it by the nation.
>
> Our conclusion, therefore, from the record, is not that of the court of claims. There was implication, at least, of liability to the delegates individually. And this was the understanding of the delegates. LeFlore so understood it, and the payment made to Garland's estate was a recognition of it. The payment is distinctly in opposition to the contention of the government and the conclusion of the court of claims. Both the contention and conclusion assert a unity in the delegation, the rejection of any individual payment or reward to the delegates, a time limit upon compensation for their services, however great or effective, a kind of jus accrescendi in the successors of deceased delegates. If such right existed at all, it would have existed even though the succession had come a moment before the congressional appropriation was made, and no services whatever rendered by the successors of deceased delegates.

But one point more remains to be examined. It was objected that the statute authorized the court of claims to render judgment on the claim of Garland's heirs "on the principle of quantum meruit for services rendered and expenses incurred" and that therefore "no judgment can be rendered on a petition which seeks to recover merely on the ground of a contract." On this point the learned Justice said:

> The contention under the facts disclosed in the petition is technical. The petition showed services rendered, and, if the petition be true, valuable services, and for them there should have been recovery if the nation was liable, and we think it was. How much we do not say nor did the court of claims consider, it being of opinion that the nation was not liable for anything. Upon the return of the case it may determine the amount due Garland, if anything, dependent upon what his services contributed in securing the congressional appropriation.

The judgment of the court of claims was accordingly reversed. Mr. Harry Peyton argued the case for the heirs of Garland and Mr. Solicitor General Frierson for the Choctaw Nation.

Carriers (a)—Federal Operation, Liability of Director General

Mo. Pac. R. R. Co. et al v. Ault, Adv. Ops., p. 647.

A statute of Arkansas provides that whenever a railroad company or receiver shall discharge an employee, with or without cause, it shall pay him his full wages within seven days thereafter, and that if such payment is not so made, then as a penalty for such nonpayment, the wages of such employee shall continue from the date of discharge at the same rate, until paid. Ault brought suit in August, 1918, under

this statute against the Mo. Pac. R. R. Co. before a Justice of the Peace and recovered judgment by default. The company appealed to the Circuit Court and moved to substitute the Director General of Railroads. This the court refused to do, but joined the Director General as defendant and rendered judgment for $50 debt and $390 penalty. The judgment was affirmed by the Supreme Court of Arkansas and the case came to the Federal Supreme Court on writ of error.

Mr. Justice Brandeis delivered the opinion of the court, and stated the contentions of the plaintiffs in error as follows:

> The President had taken possession and control of the Missouri Pacific Railroad on December 28, 1917, pursuant to the Proclamation of December 26, 1917 . . . under the Act of August 29, 1916 . . . He was operating it through the Director General under the Federal Control Act . . . when Ault was employed, when he was discharged, and when the judgment under review was entered . . . The company had claimed seasonably that, under the acts of Congress, it could not be held liable either for the wages or the penalty; and that, if the state and Federal statutes should be construed as creating such liability, they were in that respect void as to it, under the Federal Constitution. The Director General did not contest liability for wages actually due, but claimed that, under the legislation of Congress, he was not liable for the penalty, and that the state statute, as applied to him, was void under the Federal Constitution.

Referring to the statutes, orders and decisions the learned Justice demonstrated that "the carrier companies were completely separated from the control and management of their systems" and said:

> It is obvious, therefore, that no liability arising out of the operation of these systems was imposed by the common law upon the owner-companies, as their interest in and control over the systems were completely suspended.

In considering the contention that the carrier was liable under the provision of sec. 10 of the Federal Control Act, which in terms continues the liabilities of carriers while under Federal control and permits suits against them, and the claim that these provisions should be construed as subjecting the companies to liability for acts and omissions of the Railroad Administration, although they were deprived of all power over the property and the personnel, he said:

> Such a radical departure from the established concepts of legal liability would at least approach the verge of constitutional power. It should not be made in the absence of compelling language. (Citing Cases.) There is none such here.
>
> The plain purpose of the above provision was to preserve to the general public the rights and remedies against common carriers which it enjoyed at the time the railroads were taken over by the President, except in so far as such rights or remedies might interfere with the needs of Federal operation. . . . The government was to operate the carriers, but the usual immunity of the sovereign from legal liability was not to prevent the enforcement of liabilities ordinarily incident to the operation of carriers. The situation was analogous to that which would exist if there were a general receivership of each transportation system. Operation was to be continued as theretofore, with the old personnel, subject to change by executive order. The courts were to go on entertaining suits and entering judgments under existing law, but the property in the hands of the President for war purposes was not to be disturbed. With that exception, the substantial legal rights of persons having dealings with the carriers were not to be affected by the change of control.
>
> This purpose Congress accomplished by providing that "carriers while under Federal control" should remain subject to all then-existing laws and liabilities, and that they might sue and be sued as theretofore. Here the term "carriers" was used as it is understood in common speech,—meaning the transportation systems, as distinguished from the corporations owning or operating them.

Upon the definition of the term "carriers," as used in the act, this branch of the case turns and the conclusion was reached that if the cause of action arose while the government was operating the system, the words "the carrier, while under Federal control, shall be liable and suable" mean, as a matter of law, that the *system as an entity* should be liable and that the *governmental operating agency* in control of the system and under existing law responsible for its acts, should be suable. It was therefore held that the application of the railroad company to be dismissed from the case should have been granted and the judgment against it should therefore be reversed.

On the question of the liability of the Director General, the learned Justice said:

> The contention that the Director General, being the carrier, is liable for the penalty imposed by the Arkansas statute, is rested specifically upon the clause in sec. 10, to the effect that the carriers "shall be subject to all laws and liabilities as common carriers, whether arising under state or Federal laws or at common law," and the provision in sec. 15, that the "lawful police regulations of the several states" shall continue unimpaired. By these provisions the United States submitted itself to the various laws, state and Federal, which prescribed how the duty of a common carrier by railroad should be performed, and what should be the remedy for failure to perform. By these laws the validity and extent of claims against the United States, arising out of the operation of the railroad, were to be determined. But there is nothing either in the purpose or the letter of these clauses to indicate that Congress intended to authorize suit against the government for a penalty, if it should fail to perform the legal obligations imposed. The government undertook, as carrier, to observe all existing laws; it undertook to compensate any person injured through a departure by its agents or servants from their duty under such law; but it did not undertake to punish itself for any departure by the imposition upon itself of fines and penalties, or to permit any other sovereignty to punish it. . . .
>
> The purpose for which the government permitted itself to be sued was compensation, not punishment. . . . Wherever the law permitted compensatory damages, they may be collected against the carrier while under Federal control. Such damages may reasonably include interest and costs . . . But double damages, penalties, and forfeitures, which do not merely compensate but punish, are not within the purview of the statute. (Citing cases.) The amount recovered in the present case over and above the wages due and unpaid, with interest, is in the nature of a punishment. It is called a penalty in the state statute . . . It is composed of all the elements and serves all the purposes of exemplary damages . . . Whatever name be applied, the element of punishment clearly predominates, and Congress has not given its consent that suits of this character be brought against the United States. The judgment against the Director General, so far as it provided for recovery of the penalty, was erroneous.

The case was argued by Mr. Robert E. Wiley for the plaintiffs in error and by Mr. Frank Pace for defendants in error.

Carriers (b)—Liability for Loss, Interpretation of Uniform Bill of Lading

Yazoo & Miss. Valley R. R. Co. v. Nichols, Adv. Ops., p. 642.

The railroad company issued to a shipper a bill of lading for cotton loaded into a box car for shipment, at a station where there was a regularly appointed agent, but before the loaded car had been attached to any train or engine and while it was on a spur or side track built by the railroad company at its own expense, about one-half of which was on its

right of way and the remainder on private property, it was destroyed by fire.

In a suit in a state court to recover the value on the cotton, the carrier contended that it was relieved from liability by that portion of par. 5 of the uniform bill of lading, reading as follows:

> Property destined to be taken from a station, wharf or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels and when received or delivered on private or other sidings, wharves or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

On the trial a verdict was directed for the shipper, and affirmed by the Supreme Court of Mississippi, and the case was brought before the Supreme Court of the United States by certiorari.

Mr. Justice Brandeis delivered the opinion of the Court, and said:

> Whether goods destroyed, lost, or damaged while at a railroad station were then in the possession of the carrier as such, so as to subject it to liability in the absence of negligence, had, before the adoption of the uniform bill of lading, been the subject of much litigation. At stations where there is a regularly appointed agent the field for controversy could be narrowed by letting the execution of a bill of lading or receipt, evidence delivery to and acceptance by the carrier; and by letting delivery of goods to the consignee be evidenced by surrender of the bill or execution of a consignee's receipt. But at nonagency stations this course is often not feasible. There the field for controversy as to the facts was particularly inviting and the reasons persuasive for limiting the carrier's liability. Local freight trains are often late. Shippers or consignees cannot be expected to attend on their arrival. Less than carload freight awaiting shipment must ordinarily be left on the station platform, to be picked up by the passing train, and lots arriving must be dropped on the platform, to be called for by the consignee. At such stations the situation in respect to carload freight is not materially different. And this is true whether the car be loaded for shipment on the public siding or on a neighboring private siding, and whether the arriving loaded car be shunted onto a public siding or a private siding. There carload, as well as less than carload, freight, whether outgoing or incoming, must ordinarily be left unguarded for an appreciable time. It is not unreasonable that shippers at such stations should bear the risks naturally attendant upon the use. The reason why an agent is not appointed is that the traffic to and from the station would not justify the expense. The station is established for the convenience of shippers customarily using it. And the paragraph here in question was apparently designed to shift the risk from the carrier to shipper or consignee of both classes of freight. It does so in the case of less than carload freight by having the carrier's liability begin when the goods are put on board cars, and end when they are taken off. It does so in the case of carload freight by limiting liability to the time when the car is attached to or detached from the train. But, at a station where there is a regularly appointed agent it would be obviously unreasonable to place upon the shipper, after a bill of lading has issued, the risks attendant upon the loaded car remaining on the public siding because it has not yet been convenient for the carrier to start it on its journey. It would likewise be unreasonable to place upon the consignee at such a station the risk attendant upon the arriving car's remaining on the siding before there has been notice to the consignee of arrival and an opportunity to accept delivery.
>
> If we approach the construction of the second clause of the last paragraph of Sec. 5 of the uniform bill of lading in the light of this practical situation all doubt as to its meaning must vanish. It could not have been intended that at stations where there are regularly appointed agents outgoing loaded cars for which bills of lading have issued, and which are left standing on a siding solely to await the carrier's convenience, are to be at the risk of the shipper. And this is true whether the siding be a strictly public one or a semipublic one . . . or whether it be a siding privately used, but owned by the railroad . . . and in such cases the fact that the spur extends over land not part of the carrier's right of way is immaterial. The construction contended for by the railroad, even if not applied to team tracks in the freight yards of a great city, would place all loaded cars arriving elsewhere at the owner's risk from the moment they were detached from a train, although the consignee had not even been notified of their arrival.
>
> It is clear that the immunity conferred by the last paragraph of Sec. 5 does not apply to loaded cars on the spur here involved. Whether the same rule should apply to cars on strictly private industry tracks effectively separated from the terminal, and exclusively under private control, like the industry tracks involved in Bers v. Erie R. Co., 225 N. Y. 543, 122 N. E. 456, we have no occasion to determine.

The decision of the Supreme Court of Mississippi was accordingly affirmed.

Mr. Chas. N. Burch argued the case for the railroad and Mr. John W. Cutrer for the shipper.

Local Improvements—Special Assessments—Exemptions of Federal Instrumentalities

C., O. & G. Ry. et al. v. Mackey, Adv. Ops., p. 629.

Plaintiffs in error filed a bill in the U. S. District Court, E. District of Oklahoma, to enjoin the collection of a special assessment levied on their right of way and station grounds for paving a street running parallel to their tracks and alongside their station grounds. The assessment was assailed on several grounds, chief of which was that the property was immune from state taxation because that part of the railroad was an instrumentality of the Federal government. This contention prevailed in the district court, but its decree was reversed by the Circuit Court of Appeals, Eighth Circuit, with directions to dismiss the bill. The case was brought to the Supreme Court by writ of error.

Mr. Justice Brandeis delivered the opinion of the court and on the point stated said:

> The claim of immunity from assessment rests upon these facts: The right of way and station grounds are on land which had belonged to the Creek Nation before the town (now city) was established under direction of the Secretary of the Interior, pursuant to the original Creek Agreement. The Rock Island acquired its interest on March 24, 1904, under a lease . . . for a period of 999 years, of all of its railroad property. The lessor company had, in locating its railroad . . . taken, besides the right of way 100 feet wide, an additional strip for station purposes 200 feet wide, with a length of 3,000 feet; . . .
>
> The contention is that the railroad is an instrumentality through which the government undertook to perform its obligation to develop coal lands belonging to the Indians; and that, if the railroad's interest in the right of way and station grounds could be subjected to a special assessment and possible sale thereunder, apart from the railroad franchises, the congressional purpose might be obstructed. (Citing cases.)
>
> The mere fact that property is used, among others, by the United States as an instrument for effecting its purpose, does not relieve it from state taxation. The most that can be said here is that, among the public served by this railroad, are some mines on land leased from the Choctaw Nation. The right of way and station grounds in question, . . . have become an integral part of through lines of a great railroad system. . . . And even though it be granted that the Federal government utilized the railroad as an instrument in working out its policy toward the Indians, the tax upon the railroad property would be none the less valid. (Citing cases.)

It was also contended that the assessment did not sufficiently identify the property assessed. On this point the learned Justice pointed out the technical and non-prejudicial character of the alleged defects of description and said:

> Furthermore mere insufficiency of description or other irregularity in the proceeding would not entitle abutting landowners to the relief sought here. Their right would be limited to having the mayor and council make a reas-

sessment conforming to the regulations prescribed by the statute. (Citing cases.)

The remaining point was that railroad right of way and station grounds were not subject to assessment. After defining the character of the railroad title as not a mere easement, nor a fee simple absolute, but a limited fee, with the incidents and remedies usually attending the fee, he said:

> In effect, the railroad is the absolute owner of the land. Its use is, and necessarily must be, exclusive. The betterment for which the assessment was levied is of a nature to enhance the value of that use. And it is the railroad, as distinguished from the Creek Nation, owner of a possible reversionary interest, to which the benefit from the improvement inures. For the railroad's use will continue indefinitely, while the specific improvement to be paid for can have but a short life.
>
> Street paving is a class of betterment to which the railroad right of way and station property are generally held to be subject. (Citing cases.)
>
> It is urged that, if the assessment is left unpaid, a sale to enforce the lien would sever an integral part of the railway. The same objection might be urged against the validity of a lien for general taxes locally assessed upon railroad property, or a mechanics' lien upon the same. The objection is clearly unsound.

The judgment of the Circuit Court of Appeals was accordingly affirmed. The case was argued by Mr. C. O. Blake for the railway company and by Mr. Jacob B. Furry for taxing authorities.

Municipal Grants.—Duration, Retrospective Effect of Statutes

District of Columbia v. Andrews Paper Co., Adv. Ops. 633. (Three cases consolidated.)

Respondents had been given permission to build vaults under certain sidewalks and parts of public streets in the District of Columbia, without any charge for occupancy, but subject to revocation without compensation when the vault space should be needed for public use or improvement. The permits were accepted by written instruments which among other things declared that the occupation of the vault space was permitted merely as an accommodation to the owner of the abutting property and that no right, title or interest of the public was in any way waived or abridged thereby. The applications for the permits contained an agreement on the part of the abutting owners to vacate the vault space and remove all machinery, fixtures and construction when so ordered by the commissioners of the District of Columbia or when needed for public use. In one of the three cases there was no proof of the actual issuance of the permit, but the application for the permit and the construction of the vault was proved.

After the issuance of such licenses and after the construction of vaults pursuant thereto, it was provided by an act of Congress that the commissioners should assess and collect rents from all users of space under the sidewalks and streets of the District of Columbia occupied or used in connection with the business of the users.

Pursuant to the authority of the act referred to, the space so used was valued and a rental was assessed against respondent which it was stipulated in the trial court was fair and reasonable in amount if it were a legal charge.

Having refused to pay the rental so assessed, suits were brought against respondents to enforce collection. The Supreme Court of the District rendered judgment against them, the Court of Appeals reversed the judgment on the ground that the act of Congress was applicable only to constructions permitted subsequent to its date, and the case was brought to the Supreme Court of the United States by certiorari.

Mr. Justice Clarke delivered the opinion of the court. After setting out the material clauses of the application, permits, building regulations and acts of Congress involved, the learned Justice said:

> The respondents defended against the collection of the assessments, claiming that their permits to construct were in such form as to create in each by contract a vested right of property in the vault in the street, of which they would be deprived without due process of law if they were required to pay the rental.
>
> To sustain this position, the respondents select from . . . . the Building Regulations . . . the provision that "no charge shall be made for occupancy of public space by vault," and that all permits are subject to revocation "when the vault space is needed for any public use and improvement" and . . . the stipulation that the vault space shall be vacated when ordered by the commissioners "or needed for public use," and from the terms of the acceptances of the permits the provision that the commissioners may place in the vaults any construction they may "deem necessary." Grouping these unrelated excerpts together, it is contended that they constitute a contract on the part of the District to leave the respondents in the undisturbed possession of the vaults, free of charge, until such time as the space may be demanded because needed for some public use and improvement; and that since the act of Congress under which the disputed rental is imposed is purely a revenue measure which does not require the surrender of the space for any public use, but contemplates the continued private use of it, it is an invalid attempt to deprive the respondents of their property without due process of law.
>
> This statement of the contention of the respondents is its own sufficient refutation.
>
> In form the permit is a mere naked permission to build. Two of the three clauses relied upon to create rights of property in the streets are derived from the Building Regulations, which, as their name implies, are designed to regulate the materials of buildings and the manner of their construction and use,—they are not looked to . . . for a grant of rights in streets,—and the third clause is from the acceptances of the permits, which are signed only by the applicants. When to this we add that the applications culminated and ended in acceptances of the permits "with the understanding that the occupation of the vault space is permitted merely as an accomodation to the owner of the abutting premises, and that no right, title, and interest of the public is in any way waived or abridged thereby" . . . and that the settled rule of law is that the grants of rights and privileges in streets are strictly construed, so that whatever is not unequivocally granted therein is withheld, and that nothing passes in such case by implication (citing cases) we cannot doubt that the permits to the respondents were mere licenses, subject to revocation at any time, in the discretion of the government of the District.
>
> Concluding as we do, that the respondents were mere licensees, we see no reason for limiting the act of Congress, as the court of appeals limited it, to constructions after the date of the act. Such an interpretation of the act would so obviously result in unjust inequality that it should be adopted only under stress of imperative language which we do not find in it.
>
> It results that the judgment of the Court of Appeals of the District will be reversed, and that of the Supreme Court affirmed in each of the cases.

The case was argued by Mr. F. H. Stephens for the District of Columbia and by Messrs. M. D. Rosenberg and Charles L. Frailey for the respondents.

Taxation—Distribution of the Massachusetts Income Tax

Dane v. Jackson, Adv. Ops. 625.

By the constitutional amendment of 1915, the Massachusetts "General Court" was given power to impose a tax at different rates upon income derived from different classes of property, but at a rate uniform on incomes derived from the same class of

property, and to exempt from other taxes the property producing such income.

Pursuant to this authority a law was enacted in 1916 which laid an income tax on the income from intangible property and practically exempted such intangibles from local taxation. The validity of the act was not assailed.

This radical change in the Massachusetts taxing system derived the local taxing authorities of a substantial part of the revenue formerly enjoyed by them under the system which had permitted them to tax intangibles as well as tangible property, and to readjust the resulting situation, an act was passed in 1919, the character of which sufficiently appears from the opinion.

This act was challenged as violating the due process and equal protection of the law clauses of the 14th Amendment. The Supreme Judicial Court of Massachusetts sustained the act and the case was brought to the Supreme Court of the United States by writ of error.

Mr. Justice Clarke delivered the opinion of the court. In regard to the purpose of the act the learned Justice said:

> It is obvious that it was the purpose of this act to reimburse the various taxing subdivisions until the year 1928, to the extent thought necessary to supply the loss which each would sustain by the withdrawal from its taxing power of the intangible property the income of which was taxed by the state, and that prior to 1928 any excess of the income tax fund over such requirements, and beginning with that year and continuing thereafter, the whole of that fund, should be distributed to such subdivisions in proportion to the amount of the state tax paid by each.

After setting forth the principal allegation of the petition for mandamus to compel the state treasurer not to distribute any portion of the income tax in question (which petition had been dismissed on demurrer) the learned Justice said:

> This statement of the case shows that it is admitted that the Income Tax Act of 1916 is a valid law; that the contention is, only, that the Act of 1919, providing for distribution of the tax, is unconstitutional; and that this contention rests wholly upon the allegation of the petition that such amount of the income tax collected by the state from the plaintiff in error and from other inhabitants of Brookline as may be returned to any other subdivision thereof, may, if the subdivision so elects, be used for local or "proprietary" purposes such that no benefit whatever will accrue from the expenditure of the tax to the plaintiff in error or to other inhabitants of the town of Brookline, or to the inhabitants of the state in general.
>
> It is argued that from these conditions it must follow that the plaintiff in error and other inhabitants of Brookline are taxed for the exclusive benefit of the inhabitants of other subdivisions of the state, and that this violates the due process of law clause; or, if not that, the equal protection of the laws clause of the 14th Amendment to the Constitution of the United States, and that therefore the proposed distribution of the tax should be restrained.
>
> The relation of the power of the Federal courts to the taxing systems of the states has been the subject of much discussion in the opinions of this court, notably in the following cases:
>
> (Here follows an exhaustive citation of great cases beginning with McCulloch v. Maryland).
>
> While the nature of the subject does not permit of much finality of general statement, it may plainly be derived from the cases cited that since the system of taxation has not yet been devised which will return precisely the same measure of benefit to each taxpayer or class of taxpayers, in proportion to payment made, as will be returned to every other individual or class paying a given tax, it is not within either the disposition or power of this court to revise the necessarily complicated taxing systems of the states for the purpose of attempting to produce what might be thought to be a more just distribution of the burdens of taxation than that arrived at by the state legislatures (citing cases); and that where, as here, conflict with Federal power is not involved, a state tax law will be held to conflict with the 14th Amendment only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation,—"to spoliation under the guise of exerting the power of taxing." (Citing cases.)

The learned Justice closes this portion of his discussion by quoting the memorable language of Chief Justice Marshall:

> "This vital power (of taxation) may be abused, but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the state governments. The interest, wisdom, and justice of the representative body, and its relations with its constituents, furnish the only security, where there is no express contract, against unjust and excessive taxation, as well as against unwise legislation generally."
>
> The application of this summary of the law renders our conclusion not doubtful.

Declaring the act to be uniform in its application to all incomes of its class, of all inhabitants of the state, and emphasizing the fact the intangible property producing such incomes had been practically exempt from all other tax the learned Justice briefly referred to the history of the ideas on which the act was based from which space here permits a single quotation:

> The tax was authorized by the people of the state, and the act was given form by the legislature, for the purpose of correcting flagrant inequalities of taxation, resulting from what the supreme judicial court, in the opinion in this case, called the 'colonization' of wealthy owners of intangible securities in towns and cities which had exceptionally low rates of taxation, "brought about by avoidance and evasion, legal and illegal, of the tax laws prevailing before the enactment of the Income Tax Law."

Returning to the fundamental question, the opinion concludes with the following paragraphs, the second of which embraces a clear utterance of the rule which must be applied to State taxation when challenged in a Federal tribunal:

> Accepting as true, as we must, the allegation of the petition, admitted by the demurrer, that the local subdivisions of the state may, "if they so elect," devote the money derived from the income tax through the distribution provided for in the act assailed, to purposes which might not confer any certain benefit upon the plaintiff in error or persons in like situation, yet, it must be accepted, on the other hand, that it is entirely clear that there are many purposes to which these subdivisions may devote the money, "if they so elect," which would be of such statewide influence that the plaintiff in error and those similarly situated would very certainly be benefited by the expenditure of it. It must be said also in this case, as was said by the supreme judicial court of Massachusetts, in the decision of a similar case, Duffy v. Treasurer, 234 Mass. 42, 125 N. E. 135; "There is nothing on this record to justify the assumption that the several municipalities design to devote to other than public use any portion of the income tax thus distributed to them. Every presumption is in favor of legality, in the absence of evidence to the contrary." This presumption of legality is a sound and strong one, and is amply sufficient to prevail over the effect of the admitted allegation of the petition.
>
> The case presented is clearly not one of that extreme inequality in taxation of which the Federal courts should lay hold, but involves rather a question of state policy, of a character which the people have been satisfied to leave to the judgment, patriotism, and sense of justice of representatives in their state legislature.
>
> The judgment of the Supreme Judicial Court of Massachusetts is affirmed.

The case was argued by Mr. Philip Nichols for the plaintiff in error and by Mr. William Harold Hitchcock for the State taxing authorities.

Book Review

Life of Walter Quintin Gresham, by Matilda Gresham. Rand McNally & Company. Chicago. Two Volumes.

Mrs. Gresham's book is written in a spirit of devotion, out of the desire to share with others the life of her many-sided, remarkable husband. Her treatment of Judge Gresham as a person is excellent. He is presented to us in human dimensions, so that as we read of the soldier, the lawyer, the judge, and the statesmen we visualize the man. Political events and critical episodes in modern American history are chronicled in these interesting volumes of reminiscences.

Walter Quintin Gresham was born in Harrison County, Indiana, March 17, 1832. He became a member of the Indiana State Legislature in 1861; served in the Civil War, rising to the rank of Major-General in the Union Army; at its close he resumed the practice of law, and in 1869 was appointed by President Grant United States District Judge for Indiana; in 1883 was appointed Postmaster General by President Arthur; in 1884 became Secretary of the Treasury, and later was appointed one of the Judges of the United States Circuit Court for the Seventh Circuit. In 1893 he was appointed by President Cleveland Secretary of State. He died in Washington, D. C., May 28, 1895, in the full maturity of his powers, while his mental gifts were still availing in that highest of human pursuits—the administration of law and justice between nations.

Judge Gresham was a man of high character, incorruptible, impartial, and able. Few men have done more for their country, both in military and civil life. Distinguished and honorable as were his military and civil services, we are told by his son, Mr. Otto Gresham of the Chicago Bar, in the introduction, "that the career of Walter Quintin Gresham was before all else that of a lawyer and judge. Definiteness he insisted on—definiteness of fact, of statement, of decision. That definiteness in affairs of State brought him criticism that he enjoyed—he was no diplomat." Judge Gresham was certainly possessed of a scientific attitude of mind, and in approaching any given subject his life shows that he had effective mental habits. As district judge he attained a special prominence by handling the bankrupt Wabash Railroad in a way which showed administrative as well as judicial ability of a high order. To him "Justice is the end of government." The place to vindicate the judicial system, he said, was in the court room. He had the quality which is cardinal to his special function, namely, the judicial faculty. He was no mere umpire. He preferred chancery to common law proceedings. He found great difficulty in bending his innate sense of justice to the prescribed standards of the common law. He was like Mansfield in that his great outline of conduct as a judge was to make the rigid rules of law subservient to the purposes of substantial justice. Notwithstanding his preference for the chancery side of the court, the many cases coming before him involving inventions led Judge Gresham to apply himself industriously to the law of patents and to master the practical side of this branch of the law, though naturally not of a mechanical turn of mind. He had the desire to manage well and thoroughly everything that came within his province. He knew that one who solves a problem intelligently must have, in addition to a grasp of principles, the ability to visualize a situation where the principle applies. Mrs. Gresham says:

> Many a time was our library cluttered up with briefs, records, and models of machinery in patent cases. One night at Indianapolis, when Judge Drummond and my husband were considering a suit for infringement on an improvement to a shuttle on a sewing machine, we brought down my sewing machine and I was the demonstrator. It was a late hour when we concluded, and when we did I knew how that case would be decided. It was not long until I had a new sewing machine.

The volumes are filled with doings of active life in an active period. Among the issues covered in terse yet fascinating style are slavery and Negro suffrage, the relations of the North and South, the Civil War and readjustment epochs, and the great labor and law developments from the early "forties" to the middle "nineties." It is hard to resist making free quotations from the pages. Judge Gresham was a firm believer in popular government. He possessed broad, humanitarian feelings. No review of the volumes would be adequate without mention of his abiding faith in the American people. Typical are some of his remarks made in 1891, when speaking at the dedication of the Grant equestrian statue in Lincoln Park, Chicago, he said:

> It is a mistake to suppose that popular government is an art or a mystery. Some of the details of administration require special training and experience. But in its broad policies, in the adjustment of it to the ends for which it was organized, in the promotion of its purposes, men like Grant, who feel rightly and see clearly, who have a sound judgment, and saving commonsense, and who will resolutely assert themselves under all circumstances, may be safely trusted with its affairs and destinies. We need men possessing these qualities to resist the aggressions of those who seek to make of our politics both an art and a mystery, intelligible only to the adept and initiated, who assume the management of them by virtue of their capacity for the deft and artful manipulation of their fellows. Their influence upon the country is corrupt and debasing, and the area of political venality constantly enlarges under it. According to their views the whole interest that any citizen has in Municipal, State, or National Government is measured by what he can make out of it. It is worse than idle to shut our eyes to the existence of corrupt methods and practices in our politics which threaten to subvert our free institutions.
>
> Engrossed in the cares of business and laborious occupations, men seem inattentive to the requirements of citizenship, but they do not consciously and willfully shirk its duties and responsibilities when they are clearly and fully understood. They may be slow to act, but when danger becomes imminent they will assert themselves again as they have in the past. The sentiment of patriotism is still strong in the people. Its voice may be unheeded for a season, and may be drowned by the noisier tongues of greed and selfishness, but it will be heard again. It patiently submits to many affronts, and quietly endures many indignities. But in its temporary silence it gathers an accumulation of energy, and when the limit of endurance has been reached, its commanding voice breaks forth on the startled air, trumpet-tongued, and against its mighty tones no other voice dares lift itself.
>
> The vast majority of the people are patriotic and sound to the core. In them is our mainstay and chief dependence. Our confidence in their steady and unfaltering love of country, which is indifferent about any show of itself and speaks only in its acts, will never be misplaced. It was this sort of patriotism that was personified in Grant.

One feels convinced after careful reading of these volumes that Mrs. Gresham has modestly, yet faithfully, presented an impartial portrait of a genuine American, one in whom in all important acts of his life justice was the first interest. His life was directly opposed to emotional attitudes, prejudices, instinctive impulses, and habitual judgments. While many judges have a clear notion of the importance of this quality of mind Judge Gresham was one of the relatively few who attained it.

WELLS M. COOK.

MALUM PROHIBITUM

Moral, Legal and Practical Distinctions Between Mala Prohibita and Mala in Se and Danger to Civic Conscience When Former Are Too Numerous

By Arthur D. Greenfield
Of the New York City Bar

MALA prohibita are statutory offenses not involving moral turpitude. They are distinguished from mala in se, which are acts supposed to be inherently wrong. This distinction rests on an assumed absolute standard of ethics, but in application usually depends on whether or not the act was an offense at common law. The decisions are not all harmonious on this point, some judges attempting to apply their own conception of moral turpitude as a standard. But if the common law test be adopted we find the distinction resting upon a sound philosophical basis. It means that acts which for a sufficiently long time and with a sufficient approach to unanimity have been recognized by our race as ethically wrong, so that the common conscience has become crystallized in the common law, are put in a special class. The category of mala prohibita, on the other hand, includes acts which only very recently have been thought to be wrong, acts which even now are regarded as wrong by a bare majority, and acts which are not considered by anybody as wrong in themselves, but which for various reasons have been forbidden. An example of the last mentioned type is prohibition of the mere possession of certain things capable of being used in a manner deemed harmful or dangerous.

Besides the distinction founded on the nature of the acts, there is also a legal distinction which is applied in prosecutions for the two classes of offenses. In the case of mala in se it is necessary, to constitute a punishable offense, for the person doing the act to have knowledge of the nature of his act and to have a criminal intent; in the case of mala prohibita, unless such words as "knowingly" and "wilfully" are contained in the statute, neither knowledge nor criminal intent is necessary. In other words, a person morally quite innocent and with every intention of being a law-abiding citizen becomes a criminal, and liable to criminal penaltes, if he does an act prohibited by these statutes. While many statutes creating new crimes do contain words requiring proof of knowledge and intent, there is a great number in which such words are omitted, sometimes by inadvertence but more often deliberately.

No one familiar with criminal law needs to be told the reason for this deliberate omission. It is precisely the same reason as that on which was founded the doctrine that ignorance of the law excuses no man. The reason for that doctrine, of course, was that experience had shown it to be a practical necessity for the enforcement of the law. In the case of mala in se it is presumed that one's own conscience will tell him when he is violating the law: but in the case of mala prohibita, where the acts forbidden are often innocent in themselves, no such knowledge can be presumed as matter of fact. The number of statutes, ordinances and regulations are so large, and they come so rapidly and from so many different sources, that the probability of actual ignorance of any one of them on the part of the average man, busy with his own affairs, is great. If his knowledge of the particular statute he is charged with violating had to be proved in order to convict him, the proportion of convictions to violations would be small and the law could not be made effective. Since, in the case of mala prohibita, knowledge of the law cannot be presumed as matter of fact, and usually cannot be proved, the courts, forced to find a way to make the law effective, have made such knowledge a presumption of law.

Knowledge of the nature of one's act would seem to be easier to prove than knowledge of the law. With respect to the former, however, just as with respect to the latter, experience has shown that to require proof of such knowledge would interfere with enforcement. "Where ignorance is bliss 'tis folly to be wise," and few could be proven guilty of such folly. Moreover, many of the forbidden acts depend on questions of fact not easy for the individual to be sure of. Where certain transactions with individuals below a specified age are forbidden, for example, it is often difficult, if not impossible, for the person taking part in such a transaction to ascertain whether the other party is or is not below the age specified. Appearances are often genuinely deceptive in matters of age. If such knowledge always had to be proved the forbidden acts would often be done innocently with impunity, and the law would be ineffective in preventing such acts. That the courts, as well as legislatures, have recognized the practical necessity pointed out, appears from their adoption, in some cases where the particular statute did require a criminal intent, of the presumption that everyone knows and intends the consequences of his acts.

There is still another distinction between mala in se and mala prohibita—not a legal distinction, but a practical one. In the case of mala in se the great majority of persons refrain from committing these acts, not so much because they are forbidden by law as because their own moral impulses make such acts repugnant to them. Those who commit mala in se consist almost wholly of a definite criminal class, enemies of society, persons whose characters are anti-social. The law corresponds here with morality, and those who violate it, even if they do not belong to the criminal class, but yield to a strong temptation—embezzling bank officials, for example—are at least conscious of their departure from morality when they do so. This is by no means the case with those who commit mala prohibita. Many such acts are committed in ignorance, either of the law forbidding them or of the facts constituting the violation. In such cases they may be committed by persons in whom the civic virtues are highly developed, persons of the best type of citizenship. Even, however, in the cases of those who violate the law consciously and intentionally, it is not always true that they belong to a different type from the average law-abiding citizen. Re-

spect for law, simply as law, exists in most of us, but usually coexists with certain other mental states. Among these are common sense, a sense of fairness, and certain natural instincts and desires. If the law conflicts too strongly with any of these most persons will disobey it, and will have little, if any, moral scruple in doing so.

Let us suppose, as an illustration, a body of patriotic men who have volunteered to fight for their country in time of war. It will be conceded that such a body represents a high type of citizenship. In becoming parts of a military unit they realize that they have to submit to strict discipline, to sacrifice much of personal freedom and comfort, to undergo severe punishment in case of breaches of discipline. They willingly make these sacrifices. If ordered to go on half rations in a time of shortage of supplies, they gladly do so. If subjected to strict sanitary rules, they obey them without grumbling. If one of their number is executed for sleeping at post when on sentry duty in face of the enemy, they regard the sentence with approval. This spirit is due not so much to a feeling of the sacredness of authority, as such, but mainly to their appreciation of the fact that the discipline, the orders and the punishments are necessary, right and proper under the circumstances. But now assume that they are given a series of orders which are, or seem to many of them, unreasonable, for which they can see no necessity, and which involve real hardship. Assume that they are punished severely for infractions of orders which have never been made known to them. Assume that the orders are so numerous and of such a nature that they are constantly being violated by a large proportion of the men unconsciously or inadvertently, and assume further that most of such violations pass unnoticed and unpunished, but that every now and then some man, through mere bad luck or perhaps through being in bad favor with the officers, is punished for doing what all the rest are doing.

What will be the effect upon this body of men? Discipline, formerly maintained by the patriotism, "esprit de corps" and good morale of the men, can perhaps still be maintained under the new conditions, but only by increasing strictness in orders, increasing severity of punishments and the vigorous use of a large body of military police. The men are the same, but their feeling has changed. They have become mutinous, sore, rebellious. They no longer respect their officers, and are inclined to resent, disobey and evade even the necessary and reasonable orders to which before they had yielded cheerful obedience.

Intelligent officers recognize the importance of morale; they take human nature as it is, and try to make their methods of discipline conform to it; they realize that if obedience and good order cannot be maintained in an average body of decent men the fault is not with the men. They do not, like some of our reformers, go about muttering "treason" and gloomily lamenting the prevalent spirit of lawlessness; they know very well what produces this spirit, how to avoid producing it, and how to change it, when found, into a spirit of willing cooperation.

An excessive creation of mala prohibita tends to foster in the public mind a feeling of resentment and willingness to disobey the law. This reacts upon the situation so as to make necessary an increase in the number of mala prohibita. Ingenuity has to be exerted by the lawmakers in prohibiting innocent acts or devising regulations as to the terms and conditions on which they are permitted, in order to make impossible or more difficult the commission of some other act which it is desired to prevent. Instances of prohibitions or regulations to aid in the enforcement of other prohibitions are familiar to all. If the sale of an article is to be prevented, not only its sale but its possession and transportation are forbidden. If it is desired to prevent the use of an article for a certain purpose or in a certain manner, arbitrary restrictions are placed upon its use for other purposes and in other ways, to prevent evasion of the particular prohibition desired. We thus have a vicious circle: the more prohibitions, the greater the tendency to violate them; the greater the tendency to violate them, the more prohibitions are required.

Some of our penal statutes are so arbitrary and show so little intelligence that even the courts have expressed their distaste at being compelled to enforce them. In a case of statutory rape under a Massachusetts law fixing the age of consent at sixteen years, the Supreme Judicial Court of that state said (Commonwealth v. Murphy, 165 Mass. 66, at page 69):

> Whatever we may think of the policy of a statute that treats a girl fifteen years and eleven months old, however mature she may be in body and mind, as if she were incapable of committing the crime of fornication, and subjects a boy of the same age with whom she joins in sexual intercourse to a possibility of the same punishment as if he were guilty of murder in the second degree, the legislature is ordinarily the judge of the expediency of creating new crimes, and of prescribing penalties, whether light or severe, for prohibited acts.

Sometimes the prosecuting officials are unwilling to enforce them. I am informed that some federal prosecutors refuse to entertain complaints of violation of the Mann White Slave Act where no commercial element is involved. Yet men have been sent to prison for long terms for violating this law without any commercial purpose.

Occasionally the courts can find a legal way out of the duty of enforcing a law offensive to their sense of justice, if the circumstances in the specific case before them are exceptionally raw. In Voves v. United States, 249 Fed. 191, the Circuit Court of Appeals reversed the conviction of the defendant for selling liquor to an Indian, an act forbidden by a federal statute, the violation of which was a felony. The Indian, a government decoy, had disguised himself as a Mexican, and two government detectives had accompanied him to the defendant's store and remained silent when the defendant remarked that the man was evidently a Mexican. The court's comment was as follows (page 192):

> May the government maintain an indictment against a person for doing a malum prohibitum when the government's conduct has misled the person into believing that the prohibited act was a lawful act? In a civil transaction between citizens such conduct . . . would create an estopped. . . . Is our government of the superman type that releases the ruler from the obligations of honesty and fairness that are imposed upon the citizens? Is one's liberty or reputation as a law-abider to have less protection than his property? We are strongly of the view that sound public policy estops the government from asserting that an act which involves no criminal intent was voluntarily done when it originated in and was caused by the government agent's deception.

But Voves was merely lucky because in his case the detectives went a shade too far. One Feeley, who with equal innocence was deceived into selling liquor to an Indian disguised as a Mexican, but in whose case no government detectives were proved to have

deliberately encouraged the deception, had his conviction under the same statute affirmed by the Circuit Court of Appeals (Feeley v. United States, 236 Fed. 903). An automobilist caught in a speed trap where the constables, armed with stop watches, are careful to station themselves in concealment at the ends of a measured quarter mile, but are also careful, remembering their legal share of the fines, to see that no signs are posted to notify him of the local speed ordinances, may feel, with the court in the Voves case, that the government should not be released from "the obligations of honesty and fairness". But he has to pay his fine.

We have seen that mala prohibita, to be successfully prevented, must be punishable without proof of knowledge either of the law or of the facts, and without proof of any criminal intent. We have also seen that the application of this principle leads to certain bad results, especially a general loss of civic conscience. This presents a problem whose solution depends on the relative importance to be attached to morality of conduct and spiritual morality. If it is more important and beneficial to society to prevent the doing of the forbidden acts than to preserve a good social morale, the solution is simple. It consists in increasing the number of prohibitive statutes and the severity of the penalties for their violation, and securing a large enough police force to enforce them with the highest possible degree of effectiveness. Any law can be quite thoroughly enforced in that way. The stringent military regulations of the Germans were very adequately enforced in the French and Belgian cities occupied by their troops in the late war.

To get effective results by this method, while entirely practicable, would require an enormous amount of money, and I suppose that is the reason it has never been attempted. Increasing the number and severity of penal statutes has, of course, been tried, but without the employment of an adequate force. For the sake of economy other methods have been adopted, such as giving the informer a portion of the fine, winking at blackmail and graft in order to make the position of enforcement officer attractive in spite of low official pay, and—a very common method—allowing general violation of the law for long periods and then occasionally pulling off drag-net raids. These methods, while not effective in wholly preventing the prohibited acts, do accomplish something in confining their commission largely to those who make a business of it and can afford the additional overhead expenses imposed on them by law enforcement. The preference for such methods, however, creates the impression on the part of the average citizen that the government—his personification of the lawmaking powers—is hypocritical, is "bluffing", as he would put it, and does not really desire or intend the enforcement of these laws. He therefore has little moral compunction in violating them, being merely careful to see that he is not caught doing so.

If the preservation of a good civic spirit is more important than the prevention of the acts sought to be prohibited, then the only solution is to do away with mala prohibita. This does not means abandoning the penal law, since that is needed to take care of the real criminals; it means giving up the attempt to regulate conduct by statute in a manner which does not agree with the moral sense of any substantial percentage of the non-criminal population in any community to which these statutes are to be applied. There may be those who, while realizing the evils attendant upon statutory prohibitions, yet believe that certain prohibitions are required to protect the public health and morals, and that it will not do to wait for the slow process of public education. To these I can only say that the public health and morals are not protected by penal laws which are not thoroughly enforced. Let them obtain assurance that the legislature will appropriate enough money for a rigid enforcement before they attempt to get their statutes passed, lest the harm done be greater than the harm prevented. There may be some who believe that the passage of a law has an educative effect upon the public. To these I suggest that laws for that purpose should take the form of legislative declarations, not of statutory prohibitions with penalties for their violation. But to all who seek to regulate and reform human conduct I recommend an earnest and open-minded study of human nature.

International Law Association Meeting

The International Law Association held its twenty-ninth Conference at Portsmouth, England, in May, 1920. The Right Hon. The Earl of Reading, Lord Chief Justice of England, was the President.

This was the first meeting since the Conference at Madrid, in 1913. The subjects discussed were the League of Nations, the Report of the British Maritime Law Committee on the Laws of War at Sea, the Treatment of Prisoners of War, and Aviation in Time of Peace.

It will be remembered that the Association held a Conference in connection with the meeting of the American Bar Association at Buffalo in 1899 under the Presidency of Mr. Justice Kennedy and a Conference at Portland, Maine, under the Presidency of the Right Hon. Lord Justice Kennedy.

This Association was founded in October, 1873, as the Association for the Reform and Codification of the Laws of Nations. It is interesting to know that the idea of such an Association had its inception in the brain of Elihu Burritt, "the learned blacksmith." To him it meant an international movement in the interest of peace.

It was brought to the attention of David Dudley Field, formerly President of this Association, who aided in its organization. He was President at the second Conference in 1874, the third in 1875, and the sixth in 1878. For many years he was most active and influential in the Society.

At the nineteenth Conference in 1900 at Rouen Judge Simeon E. Baldwin was President.

Francis Rawle, a former President of the American Bar Association, has been for over thirty years a member of the Executive Council.

Chief Justiceship and Peerage

"The elevation of Sir Alfred Tristram Lawrence to the Peerage is a fitting tribute to a Lord Chief Justice who, though appointed in circumstances not beyond the reach of criticism, has most worthily maintained the great traditions of the office during the few months he has occupied it. It is, too, a fitting tribute to the office itself. Every Lord Chief Justice since the days of Lord Mansfield has, with the exception of Sir Alexander Cockburn, been a peer."—*The Law Journal.*

ACTIVITIES OF STATE BAR ASSOCIATIONS

Secretaries of State Bar Associations are requested to send in news of their organizations. "News" means not only official statements of time, place and programs of regular meetings and the action there taken, but also reports of other interesting activities. In brief, anything showing what the membership, committees and leaders in the State Bar Association are thinking and doing with respect to matters of professional interest. Secretaries can help to make this department one of the most interesting in the Journal. The collection of reports will enable each State Bar Association to see every month what the others are doing and to avail itself of any suggestion contained in their activities. Contributions should be mailed not later than the 25th of each month and should be addressed to the editorial office, 1612 First National Bank Building, Chicago.

MEETING OF SECRETARIES AT CINCINNATI

Conference Selects One Office, "The Chief," but Refuses to Disclose Name

A bunch of good fellows assembled for lunch in Parlor E at the Hotel Sinton on August 30. Taking off their coats they sat down to the table in old boarding-house style and immediately started to talk shop. Eleven State Bar Association Secretaries made up the largest part of the crowd, with a Treasurer and President as innocent by-standers.

It was agreed in advance that the discussions should be perfectly frank and that no printed report of the remarks would ever embarrass a speaker. Each secretary had brought with him a set of blank forms used by his association in its work, and it was soon seen that no two associations were following the same line and that there is a big field awaiting development in the matter of standardizing State Bar Association activities.

As a starter, Frank W. Grinnell of Massachusetts discussed the matter of the exchange of reports and publications and, after everyone had had his say, it seemed to be the consensus of opinion that the present method of distribution wastes a whole lot of time and energy. The Chief was instructed to see if some kindly disposed law book house would not act as a medium of exchange for all of the State Associations, so that libraries desiring copies of the annual reports would only have to deal with one agency and the State Associations would simply forward to such agency a supply of their reports, instead of the present method of trying to distribute directly to all of the libraries.

John H. Voorhees of South Dakota developed the fact that the nearest thing to uniformity of practice in the associations is in the matter of collecting dues. Most of the Associations now carry their members until they are delinquent for three years and then drop the laggards for non-payment. However, the discussion brought out the fact that most of the associations have little difficulty along this line and none represented seemed to be financially embarrassed on this account.

The Dean of Secretaries, Frederic E. Wadhams, of New York, led in a very interesting discussion on the matter of the accusation so frequently heard that the associations are run by cliques and showed that this is rapidly becoming a dead issue. Illinois has probably gone farther in removing this criticism than any other state by providing for election of officers by mail and further providing that certain members of the Board of Governors be elected at district meetings by the representatives of local bar associations. The matter of statutory organization of the bar was presented by J. L. W. Henney, of Ohio, and showed that while there has been a trend of opinion among lawyers toward statutory organization, several attempts to obtain the enactment of statutes have failed and it will require some time to determine whether this movement is headed toward success or failure.

The meeting of August 30 was such a success that it was decided to reconvene the following noon for another luncheon when a general discussion was held under the direction of R. Allan Stephens of Illinois. One of the constantly recurring problems of a secretary is the preparation of proper programs for annual meetings, dinners, etc., and the secretaries present agreed that each should furnish a list of available speakers for such work, so that a secretary might have a list covering speakers for all parts of the country.

The question of a permanent organization of secretaries was discussed but these fellows see so much of organizations and spotlighting that it was agreed to have but one officer known as "The Chief," whose name should not be known to the public and that annual meetings should be held at each session of the American Bar Association. The secretary of the state in which the meeting is held is to have charge of the local arrangements and "The Chief" to line up the performers for the program. The secretaries present at the meeting were Strozier of Georgia, Stephens of Illinois, Batchelor of Indiana, Connor of Kentucky, Young of Louisiana, Grinnell of Massachusetts, Wadhams of New York, London of North Carolina, Henney of Ohio, Voorhees of South Dakota, and Barnes of West Virginia.

Who is Chief for this year? Every one of the above named secretaries know. It's nobody else's business.

NORTH DAKOTA

Bar Association Organized Under Recent Act of the Legislature Recognizing It

Sir James Aikens, Lieutenant-Governor of Manitoba, delivered the annual address to the Bar Association of North Dakota at the meeting at Grand Forks on July 7 and 8. His subject was "The Development of the Red River Valley," and the address was one of great interest. Among other addresses of note was one by Mr. Edmund A. Prendergast, Chief Counsel for the Bell Telephone Company, of Minneapolis. His subject was "Control of Public Utilities."

Organization of the Association under the recent act of the legislature establishing it as a state institution was perfected at this meeting. A new constitution and by-laws were adopted. Under the act of 1921 all

practicing lawyers who have paid annual license fees of $15 to the state are made members of the association. No dues are required beyond this license fee. Out of the funds resulting from such payment there is appropriated a sufficient amount to cover the expense of the association.

At this meeting there was consideration of a bill giving the association complete control of admission to the bar and the discipline of its members. At present these powers are vested in a State Bar Board appointed by the Governor. If the proposed act becomes a law, it will be really the first systematic organization of a bar of any state in the Union. It is a combination of the State-wide Bar Association Bill, published in the JOURNAL OF THE AMERICAN JUDICATURE SOCIETY, and of the Canadian Legal Profession Act. At the next annual meeting the proposal will be further considered.

Hon. Tracy R. Bangs of Grand Forks was elected President, Hon. Charles J. Fiske of Minot Vice-President, and Mr. John E. Greene of Minot Secretary-Treasurer.

OHIO

The registration of members at the forty-second annual meeting of the Ohio State Bar Association was the largest in its history, due undoubtedly to the fact that the meeting was held at Cincinnati jointly with the American Bar Association.

The business meeting on Thursday morning, September 1, was opened by the election of officers of the Judicial Section for the ensuing year. Chief Justice Carrington T. Marshall of the Supreme Court of Ohio was chosen chairman, and Judge Frank M. Clevenger of Wilmington was elected secretary.

Hon. Harry M. Daugherty, attorney general of the United States, and Judge W. L. Porter of Kentucky informally addressed the business meeting.

President Daniel W. Iddings of Dayton, in his annual address, advocated greater scrutiny of the moral character of those seeking admission to the bar, recommended that applicants for admission be examined in the Bible, Shakespeare and Blackstone's Commentaries, condemned the manner in which some practicing attorneys had been soliciting business by advertising with cards detailing their alleged specialized practice, reviewed the history of statutory organization in the United States and Ohio, and pleaded for the integration of the bar as a means to elevate the bench and bar in public esteem.

Executive Secretary Henry H. Hollencamp of Dayton presented a report of his activities for the year in canvassing the state for new members for the Ohio Society, his report showing some 450 new members added to the roster due to his efforts. His experience demonstrated that letters soliciting members brought little response and that personal calls upon attorneys were necessary. He found a sentiment for local organization in the smaller communities, and suggested that membership in the local associations be required as a prerequisite to admission in the state organization, and that state and local associations be affiliated in order to stimulate interest in the latter. Complaints were made to him with reference to the lax manner in which public commissions of notaries are issued, the present system requiring no investigation as to the qualifications of applicants. Mr. Hollencamp also reported upon the statutory organization bill, which had been introduced in the general assembly, reported out of the senate committee with recommendation of passage, and was on the calendar when the legislature was adjourned by proclamation of the governor.

The association directed its Executive Committee to continue the employment of an executive secretary during the forthcoming year.

Curtis E. McBride of Mansfield was elected president, J. L. W. Henney and John F. Carlisle, both of Columbus, were re-elected secretary and treasurer, respectively. The following were elected members of the Executive Committee: A. J. Shattuck, Cincinnati; W. S. Harlan, Hamilton; Harvey D. Grindle, Lima; G. Ray Craig, Norwalk; C. A. Reid, Washington C. H.; Charles B. Hunt, Coshocton; Newell K. Kennon, St. Clairsville; William L. Hart, Alliance; Wm. J. Geer, Galion, and George B. Harris, Cleveland.

Some four hundred of the members of the American and Ohio State Bar associations were taken by special train from Cincinnati to Dayton on Saturday, September 3rd, and were met at the station by moving picture operators and automobiles. The guests were conveyed to the school house of the National Cash Register Company, where the informal meeting was called to order by Hon. Robert R. Nevin of Dayton, who introduced George F. Holland, president of the Montgomery County Bar Association. At the conclusion of Mr. Holland's remarks, the president of the N. C. R., Frederick B. Patterson, son of John H. Patterson, delivered an address of welcome on behalf of that company. Paul Howland of Cleveland responded for the American Bar Association, and Province M. Pogue for the Cincinnati Bar Association.

Hon C. A. Severance, newly elected president of the American Bar Association, having been detained at Cincinnati by a meeting of the Executive Committee, Dr. D. F. Garland, director of welfare of the N. C. R., who was then presiding, called upon Mrs. Severance to speak on behalf of the newly elected president, and the charming manner in which she responded brought her audience to its feet.

President Curtis E. McBride of the Ohio State Bar Association addressed the meeting, and Dr. D. F. Garland delivered a talk upon the welfare work of his company, which was followed by an illustrated lecture upon the same subject.

Retiring President Daniel W. Iddings was presented with a silver urn by W. W. Westerfield, New Orleans, on behalf of himself and associate delegates to the American Bar Association from Louisiana, Messrs. W. W. Young, H. P. Dart, B. W. Kernan and E. L. Lazarus, all of New Orleans.

Following the meeting, the guests were tendered a luncheon at the Officers' Club of the N. C. R.

After luncheon automobile trips were taken to the McCook Aviation field, where airplane activities were inspected and flights made to demonstrate need of legislation regulating aeronautics. Visitors were taken to points of interest along the Miami Conservancy project, which is being constructed to protect Dayton and the Miami Valley against the recurrence of disastrous floods such as that of 1913.

The visitors were guests at a lawn party and supper at "Far Hills," the suburban home of John H. Patterson, where informal addresses were delivered by President C. A. Severance of the American Bar Association; Chief Justice Carrington T. Marshall of the Ohio Supreme Court; O. N. Carter, chief justice of the Supreme Court of Illinois, and Mr. Yamamoto of Tokyo, Japan. The motion pictures of events during the day were displayed upon the screen.

LETTERS FROM BAR ASSOCIATION MEMBERS

Of Value to the Profession

Lynchburg, Va., Aug. 29.—To the Editor: I have been so much impressed with the American Bar Association JOURNAL and its very great value to the profession that I feel impelled to write and tell you so.

The special articles have been of unusual charm and literary style as well as valuable historical and biographical contributions. The departmental articles are as interesting as they are instructive. This is particularly true of the Review of the Supreme Court Decisions. This department is worthy of special praise.

I look forward to each number of the JOURNAL with increasing interest and pleasurable anticipation.

FRED HARPER.

The "Fourth" State Bar Association

Montgomery, Ala., Aug. 24.—To the Editor: This morning in glancing over the pages of your interesting JOURNAL I was struck very forcibly with a strange inaccuracy in the extract from the annual address of Mr. Marvelle C. Webber as President of the Vermont Bar Association at the meeting in 1920, as printed on pages 297-300 of the JOURNAL. After stating the dates of organization of the New York, Illinois and Vermont Bar Associations, he says: "The Ohio State Bar Association, organized in 1880, the fourth state bar organization, expresses as its objects," etc. In the same paragraph, however, Mr. Webber quotes from the address of President E. P. Green, before the Ohio Bar Association in 1888, in which address we find the following language: "The fact that in 1880 when we met in Cleveland, and organized this Association, there were in all the states of the Union but four State Bar Associations," etc., would, it seems to me, have been quite sufficient to have put Mr. Webber on notice that the Ohio Bar Association was not the "fourth" to be organized. If he had been as diligent after information as he might have been, he would have discovered that the Alabama State Bar Association was organized January 15, 1879, and the Act of the Legislature incorporating it approved February 12, 1879.

This association is not only the "fourth" State Bar Association to be organized but the "first" to adopt a Code of Ethics—December 14, 1887—which has been the model for the codes adopted by the American Bar Asssociation (see proceedings of meeting at Seattle) and of many State Associations.

ALEX. TROY, Secretary.

About a Famous Saying

Amsterdam, N. Y., Aug. 20.—To the Editor: In the very interesting article appearing in your July number, from the pen of Mr. W. O. Hart, on "Chief Justices of the United States," the following appears: "John Marshall, the expounder of the Constitution, was a member of Congress from Virginia and delivered the Memorial Address on Washington after his death, wherein he used the famous phrase: 'First in war, first in peace, and first in the hearts of his country,' not 'fellow-citizens,' or 'fellow-countrymen,' as the expression is often quoted." I think he errs with reference to this famous phrase: "First in war, first in peace," etc.

There is found in the Annals of the 6th Congress, 1st Session, December 18, 1799, page 203, the following: "Mr. Marshall of Virginia stated that there was unconfirmed news of the death of General Washington and moved that the House adjourn." December 19, 1799, page 203: "Mr. Marshall announced the confirmation of the sad news of the death of General Washington," and offered three resolutions, the third of which, as it appears at page cited, was as follows: 'That a joint committee of both Houses be appointed to report measures suitable to the occasion and expressive of the profound sorrow with which Congress is penetrated on the loss of a citizen, 'first in war, first in peace, and first in the hearts of his countrymen.'"

Again, on December 19, 1799, page 206, the following journal entry appears: "A message from the Senate informed the House that they have agreed to the resolutions passed by the House of Representatives for the appointment of a joint committee of both Houses to report measures suitable to the occasion and expressive of the profound sorrow with which Congress is penetrated on the loss of a citizen, 'first in war, first in peace, and first in the hearts of his countrymen.'"

Again, on December 23, 1799, page 207, in a journal entry announcing the presentation of certain resolutions by Mr. Marshall, providing for the preparation and delivery of an oration by a member of Congress, the words appear in the same form as above, but in the punctuation the comma after the word "war" does not appear.

Again, on December 19, 1799, in the proceedings of the Senate, page 15, the words occur as above cited in a journal entry recording the receipt of a message from the House. In that entry the punctuation is as first above.

On December 24, 1799, page 210, the Speaker announced that General Henry Lee of Virginia had accepted the invitation to deliver the oration.

December 26, 1799, the oration was delivered at the German Lutheran church in Washington, in the presence of both Houses of Congress.

So it seems that by the official record Marshall first uttered the words publicly, but, according to Marshall himself ("Life of John Marshall," by Beveridge), "Light Horse" Harry Lee was the author of them. In Lee's oration, he uses the words as above quoted and adds to their beauty by coupling the infinitely tender expression, "He was second to none in the endearing scenes of private life."

Nowhere in the records cited does the word "country" appear in the expression in question. In four places it appears as "countrymen."

I have no idea where Mr. Hart got his authority for the statement he made with reference to this famous expression. However, I think the Journals of Congress should control.

With best wishes for the continued success of your excellent JOURNAL, I am,

HENRY V. BORST,

Supreme Court Chambers.

Judge Parker on Chief Justice Taft

New York, July 27.—To the Editor: At a meeting of the Executive Committee of the American Bar Association in New York in 1915 or 1916 the appointment of Judge Taft to a vacancy then existing upon the Supreme Court of the United States was discussed, and a memorial was signed by all present except one, which was forwarded to President Wilson. Apropos of the appointment of Judge Taft as Chief Justice of the Supreme Court Judge Alton B. Parker wrote a letter to the New York Herald under date of July 6 in which he refers to the memorial in question. As you may be interested in printing Judge Parker's letter in the next issue of the American Bar Association Journal, I enclose a copy.

WILLIAM M. CHADBOURNE.

TO THE NEW YORK HERALD: Your editorial article of Saturday entitled "Chief Justice Taft" is so kindly in its treatment of our favorite citizen that I venture to ask you to correct the impression you seem to give that he is not adequately trained for the great position of Chief Justice of the United States. The fact is that no one of our great lawyers is better trained.

He was Solicitor-General under Harrison's Administration and argued nearly all of the great cases of the Department of Justice in the Supreme Court of the United States. And as a United States Circuit Judge he demonstrated great judicial ability, as every lawyer in the United States will testify. Nor should the fact be lost sight of that the knowledge he acquired as Governor of the Philippine Islands, Secretary of War and President of the United States will prove of the greatest value to the new Chief Justice.

The Supreme Court of the United States differs from every court in this country, or in the world for that matter, because it is constantly passing upon great problems of government, and for those great tasks his equipment is of the best.

Now, that was the opinion of nearly all, if not all, of the ex-presidents of the American Bar Association in the late fall of 1916, all but two of whom attended a meeting in New York called by Senator Root, then its president, to prepare a programme for the ensuing meeting of the American Bar Association.

President Wilson being about to appoint an Associate Justice of the Supreme Court of the United States, I proposed that we should recommend to him Judge Taft as the best qualified man in the country. Farrar of New Orleans, Judge Meldrim of Georgia, Judges Dickinson and Gregory of Chicago, all Democrats, warmly indorsed the suggestion. A letter was prepared and signed by thirty-one of the thirty-two persons present.

In their political affiliations fifteen were Democrats, fifteen were Republicans and one supported Roosevelt in 1912. Among them were Joseph H. Choate, Elihu Root and Francis Rawle. The letter was carried to the President by an ex-president, Edgar H. Farrar of New Orleans. In the offices of my firm in New York there is a photographic copy of the letter, including the signatures. ALTON B. PARKER.

ESOPUS, July 5.

Panama Canal Tolls Exemption

Minneapolis, July 13.—To the Editor: In the article on the "Panama Canal Tolls Exemption" by Mr. Horace Stringfellow, in the June issue, all grounds for the exemption are refuted except one. Mr. Stringfellow says that because the United States may lawfully exclude all other nations from our coastwise trade, therefore the treaty did not include such trade in Section 1 of Article III of the treaty.

Is not this a clear non-sequitur? The treaty was not dealing with the rights of nations as related to traffic of the high seas or otherwise; it was dealing solely with traffic through the canal, as to which no reservation or exemption was made by the treaty. Coastwise traffic using the canal is canal traffic as much as high seas traffic using the canal, and is as much included in the word "traffic" used in the treaty as any other traffic. ALFRED H. BRIGHT.

Necrology

Mr. Harrison Musgrave

Mr. Harrison Musgrave of Chicago, former President of the Illinois State Bar Association and a member of the American Bar Association, died on July 18, at his summer home at Higgins Lake, Michigan. Mr. Musgrave had been engaged in active practise since 1885.

Charles L. Bonaparte

Charles L. Bonaparte, Attorney General during the Roosevelt administration, died at his country home near Baltimore on June 28, at the age of seventy. He had been in poor health for about a year. His death was occasioned by a heart affection complicated with kidney trouble.

Mr. Bonaparte was born June 19, 1851, in the house at Park Avenue and Center Street, Baltimore, which served as his town house. He was the son of the late Jerome Napoleon Bonaparte and Susan May William Bonaparte. His paternal grandparent was Jerome King of Westphalia, who married Betsey Patterson of Baltimore.

John B. Stanchfield

John B. Stanchfield, a leader of the New York Bar and a national figure in Democratic politics, died on June 25 at his country home at Islip, L. I., at the age of seventy.

Mr. Stanchfield was born at Elmira, New York, March 13, 1855; was graduated from Amherst college in 1876; studied law in Harvard University and practised law at Elmira as a partner of David Bennett Hill until 1855, when he entered the firm of Reynolds, Stanchfield & Collin, which was dissolved in 1905.

Mr. Stanchfield appeared for the state in the impeachment of Governor Sulzer and in trials by which the Socialist Assemblymen were ousted in 1919; for Harry K. Thaw in the proceedings to end his confinement at Mattewan State Hospital; and in other notable cases.

Difficulties of Truth-Telling

"It is generally assumed that telling the truth is easy, and there is a certain admiration for the accomplished liar which is a tribute to the supposed difficulty of his self-imposed task. In fact it is easy to lie, and extraordinarily difficult to tell the truth, at least in a way to satisfy the formula of the judicial oath, 'The truth, the whole truth, and nothing but the truth.' The unsuccess of lying is due not to the difficulty of fabricating an untrue story, but to ths impossibility of creating a world. For while there is one piece of actual fact in existence it will refuse to be built into the edifice of mendacity, and may at any moment bring about the shattering of the liar's airy erection."—*The Justice of the Peace*, London.

International Questions and Answers

An institution unique in character and field is the International Intermediary Institute at the Hague. It may be called a sort of international "Questions and Answers." The statutes of incorporation declare that its object is "to supply information in the widest sense on all questions of international importance, not bearing a personal or secret character, either on international law, Dutch and foreign law and jurisprudence, or on economic and statistical data and commercial policy."

More remarkable still, the general plan is to furnish such information to any responsible inquirer in any country free of charge, except in particular cases where expense is unavoidable in order to secure the information desired.

The question naturally arises as to why any organization should go to the trouble of maintaining offices for the free dissemination of information, except in the case above mentioned, to the citizens of other nations. This is answered in a statement issued by the institute to the effect that the purpose of creating the organization was two-fold: Dutch and International. It was desired that Holland should show by her deeds that she wished to do something for the International cause, and it was desired at the same time to serve this cause on its own account. It was considered, we are told, that this could not better be achieved than by the institution of a "universal information office," financed by Dutch money and conducted by Dutchmen, that would answer questions gratuitously, collect material and place this at everyone's disposal, irrespective of nationality.

The questions which it proposes to answer are confined, on the one hand, to subjects of public law, national and international law and jurisprudence; on the other hand, to economic statistics or commercial policy. All questions of a personal or secret character are excluded.

For many years, we are informed, means for securing all kinds of details relating to international law and economics had been very poor. There was no particular bureau to which the man of any nationality could address himself. Efforts had been made to supply this want, but they had not on the whole been particularly successful. The route via governments, diplomatic channels, consuls and such like sources was often long and sometimes even did not lead to the desired goal. It was in the middle of the great war that certain Dutchmen put their heads together with the idea of supplying the need. Various commercial undertakings, companies and also divers private individuals, all of influence and significance in industry, trade and the financial world or in science, gave money or placed their names, energy or knowledge at the service of the enterprise. The result was the formation of the institute.

The work is divided into a central department and three sub-departments, to which within a measurable time a fourth will be added. In addition to answering questions of international law and economics the institute publishes a bulletin. That issued for the second year was a volume of more than 335 pages in which many important subjects were treated. There was, for example, a collection, arranged in chronological order, of all kinds of documents having reference to the conclusion of peace; an alphabetical review of judgments pronounced by the Civil Courts upon international matters; a list of official documents lodged or exchanged at the Peace Conference at Paris; an alphabetical summary of the diplomatic relations that have been entered into between the various states since peace and the acknowledgment of newly established states; a list of the several treaties and other international agreements effected recently; a narration of the various attempts that have been made to promote, or to bring about, the resumption of good relations among the States mutually in the economic sphere, etc., etc.,

The conduct of the institute has been entrusted to Dr. C. J. Torley Duwel and its address is No. 6 Oranjestraat, The Hague, Holland. It has a Council of a Patron and a Governing Board, which appoints a managing committee for the general control of the institute. Among the names in the Council of Patrons and Governing Board are those of various gentlemen distinguished by high official and university positions.

What the Criminal Fears

"It is not the character of the punishment which is most effective as a deterrent of crime, but the swiftness of that retribution which overtakes it. In Chicago, according to Mr. Sims, the speeding up of the trial of criminal cases in three years has resulted in reducing the murder rate 51 per cent. A similar result could be obtained in every city which would adopt the practice of speeding up justice in its dealings with criminals."—*Exchange.*